88-1227

Supreme Court, U.S.
FILED
JAN 25 1989
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

Supreme Court of the United States

October Term, 1988

STEPHEN J. RUSSO,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SANTA CLARA, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

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QUESTION PRESENTED

California Code of Civil Procedure section 877(b) discharges a settling joint tortfeasor from all liability for contribution to any other party if settlement is made in good faith. Section 877.6 of the Code provides for a hearing to determine whether settlement is made in good faith. The nonsettling party asserting lack of good faith bears the burden of proof on that issue under section 877.6(d).

The question presented is:

May a nonsettling defendant be denied the opportunity to conduct preliminary limited discovery necessary to meet its burden of proof at a hearing to determine good faith settlement or does such application of Code sections 877 and 877.6 amount to an intentional deprivation of the nonsettlor's due process rights contrary to the fourteenth amendment to the United States Constitution if the nonsettlor is forced to bear a disproportionate share of the plaintiffs recovery as a result?

LIST OF PARTIES

The parties to the proceedings below in the California Court of Appeal First Appellate District were the petitioner Stephen J. Russo and respondent superior court of the state of California for the County of Santa Clara, Honorable Conrad Rushing, Judge. Real parties in interest were settling defendants Bear Stearns & Co., Inc. and Michael J. Doherty, Jr.; Bank of the West; Paul A.Wehner; Ernest DeLaOssa; KMG Main Hurdman, Marilee P. Lau, Frederic D. Winslow, Robert E. Nilssen; Security Pacific National Bank; Kouns, Marshall, Quinlivan & Severson; Paul M. Kouns, Douglas E. Marshall, Michael Quinlivan and Lawrence L. Severson; and Robert D. Campbell, William F. Gates, Ridge L. Harlan, Richard G. Landis and William E. McKenna.

Additional defendants are listed in the Appendix at pp. a1-a2.

Plaintiffs in these coordinated cases are also listed in the Appendix at pp. a3-a21.

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

The petitioner Stephen J. Russo respectfully prays that a writ of certiorari issue to review the order of the California Court of Appeal First Appellate District, entered in the above-entitled proceeding on September 27, 1988. (Order denying review after judgment by the court of appeal was entered by the California Supreme Court on October 27, 1988.)

OPINIONS BELOW

The orders from the California Supreme Court and California Court of Appeal First Appellate District are reprinted in the Appendix hereto at pp. a22 and a23, respectively.

JURISDICTION

The order of the California Court of Appeal First Appellate District was entered on September 27, 1988, denying petitioner's petition for writ of mandate. The California Supreme Court denied petitioner's petition for review on October 27, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. section 1257(3).

STATUTES INVOLVED

California Code of Civil Procedure section 877. Effect of release, dismissal, or covenant not to sue or enforce judgment; Application of section.

§ 877. **Release of one or more joint tortfeasors or co-obligors; effect upon liability of others**

Where a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment is given in good faith before verdict or judgment to one or more of a number of tortfeasors claimed to be liable for the same tort, or to one or more other co-obligors mutually subject to contribution rights, it shall have the following effect:

(a) It shall not discharge any other such party from liability unless its terms so provide, but it shall reduce the claims against the others in the amount stipulated by the release, the dismissal or the covenant, or in the amount of the consideration paid for it whichever is the greater.

(b) It shall discharge the party to whom it is given from all liability for any contribution to any other parties.

(c) This section shall not apply to co-obligors who have expressly agreed in writing to any apportionment of liability for losses or claims among themselves.

(d) This section shall not apply to a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment given to a co-obligor on an alleged contract debt where the contract was made prior to January 1, 1988.

California Code of Civil Procedure section 877.6. Hearing on issue of good faith settlement; Review.

§ 877.6. **Determination of good faith of settlement with one or more tortfeasors or co-obligors; review by writ of mandate; tolling of time limitations**

(a) Any party to an action wherein it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt . . . shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice thereof in the manner provided in Sections 1010 and 1011 at least 20 days before the hearing. In addition, the notice may be served by mail pursuant to Section 1012, but in those cases the period of notice shall be at least 25 days if the place of address is within the State of California, at least 30 days if the place of address is outside the State of California but within the United States, and at least 40 days if the place of address is outside the United States. The provisions of Section 1005 and the provisions of subdivision (a) of Section 1013, extending the time within which a right may be exercised or an act may be done, do not apply to this section. Upon a showing of good cause, the court may shorten the time for giving the required notice to permit the determination of the issue to be made before the commencement of the trial of the action, or before the verdict or judgment if settlement is made after the trial has commenced.

(b) The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counter affidavits filed in response thereto, or the court may, in its discretion, receive other evidence at the hearing.

(c) A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial

or comparative indemnity, based on comparative negligence or comparative fault.

(d) The party asserting the lack of good faith shall have the burden of proof on that issue.

(e) When a determination of the good faith or lack of good faith of a settlement is made, any party aggrieved by the determination may petition the proper court to review the determination by writ of mandate. The petition for writ of mandate shall be filed within 20 days after service of written notice of the determination, or within such additional time not exceeding 20 days as the trial court may allow.

(1) The court shall, within 30 days of the receipt of all materials to be filed by the parties, determine whether or not the court will hear the writ and notify the parties of its determination.

(2) If the court grants a hearing on the writ, the hearing shall be given special precedence over all other civil matters on the calendar of the court except those matters to which equal or greater precedence on the calendar is granted by law.

(3) The running of any period of time after which an action would be subject to dismissal pursuant to Section 583 shall be tolled during the period of review of a determination pursuant to this subdivision.

STATEMENT OF THE CASE

These coordinated cases are an attempt by disappointed investors in Technical Equities Corporation to recover money they lost after Technical Equities filed for bankruptcy in February of 1986. The trustee in bankruptcy was unable to recover most of the bankrupt estate's assets, including the bulk of funds invested by plaintiffs in the corporation's investment programs.

Defendants in these cases include officers and directors of Technical Equities Corporation, as well as institutions and professional firms that performed services for the corporation. Plaintiffs claim that their investments were lost as a result of fraud perpetrated upon them by Technical Equities Corporation, and that the defendants aided and abetted the company's fraud by knowingly performing services which enabled it to defraud its investors.

Petitioner Stephen J. Russo was employed by Technical Equities Corporation as a tax accountant from 1979 to November 1, 1984. He was designated assistant controller of the corporation on November 1, 1984, and served as an officer of the corporation in that capacity until January 15, 1986.

This litigation was ongoing when Mr. Russo was brought into 477 of these cases by service of summons and complaint on June 10, 1988. The first cases were filed in 1986. Trial of seven cases was held between March 31 and June 29, 1988, and judgment was entered in favor of those plaintiffs on June 30, 1988.

Prior to completion of that trial and service of process on Mr. Russo, several defendants, including nearly all of the institutional defendants, negotiated settlement agreements with the plaintiffs. The settling defendants are indicated as "real parties in interest" in the "List of Parties" section of this petition for certiorari.

The settling defendants filed motions for judicial determination of good faith pursuant to California Code of Civil Procedure section 877. The motions of all settling defendants, except Paul A. Wehner, were heard in respondent court on May 18, 1988, pursuant to California Code of Civil Procedure section 877.6. (Mr. Wehner's motion was heard separately on May 25, 1988.) Petitioner Russo was not a party to this litigation at that time and was not given notice of the settlement agreements, motions or hearings.

In discovery conducted prior to the May hearings, Mr. Russo had been identified as a possible tortfeasor exposed to substantial potential liability in this litigation. The settling defendants and

plaintiffs knew of Mr. Russo's interest in the outcome of these lawsuits as they negotiated their settlement agreements.

Respondent superior court granted the settling defendants' motions for good faith settlement determination by order dated May 31, 1988. (Appendix, p. a24). Concurrent with the settlement negotiations, agreements, motions for good faith determination and, finally, the superior court's order granting good faith approval, plaintiffs were allowed a series of continuances which enabled them to postpone service on Mr. Russo until after the settling defendants had safely obtained the protection of the good faith determination.

Sensing the impropriety of the foregoing procedure, the settling defendants renewed their motions for good faith settlement on July 21, 1988, and scheduled a hearing on the renewed motions for July 27, 1988. Counsel for Mr. Russo received the first of the settling defendants' renewed motions on July 22, 1988, and filed his opposition to the motions on July 26, 1988. The opposition papers included a request for continuance of the hearing to allow Mr. Russo time to conduct limited discovery necessary to meet his statutory burden of proof under California Code of Civil Procedure section 877.6(d).

Respondent superior court refused to postpone the matter. Limited argument was allowed at the July 27 hearing, and the court issued another order approving the settlements on July 29, 1988. (Appendix, p. a27). The court's July 29 order repeated the findings of fact and conclusions of law set forth in its May 31 good faith order, and stated only that the settlements were made in good faith within the reasonable range of the settling defendants' proportional share of liability and that the record contained no hint of collusion, fraud, tortious conduct or intent to harm any of the nonsettling parties.

Under California Code of Civil Procedure section 877(b), the court's order discharges settling defendants from all liability for contribution to Mr. Russo. Code section 877.6(c) precludes Mr. Russo from asserting any claims against the settlors for indemnity or contribution. The only benefit to a nonsettlor defendant

such as Mr. Russo is that the claims against him are reduced by the settlement amount, according to Code section 877(a).

Contrary to the court's order, the settlements were in fact not made in good faith but were unreasonably low in proportion to the settling defendants', particularly the institutional settling defendants', share of liability. As a result, Mr. Russo may be forced to bear a share of liability much greater than that proportionate to his fault. By denying him the opportunity to conduct limited discovery on the issue of good faith and thereby meaningfully participate at the hearing, the court deprived Mr. Russo of a significant property interest without due process of law, contrary to the fourteenth amendment to the United States Constitution.

The financial stakes at issue in this case are enormous. Plaintiffs claim they can verify investment losses in excess of eighty-seven million dollars. They also claim damages for a panoply of assorted alleged related ills, including physical and emotional distress, injury to property and business, lost profits and future income, and injury to economic credit, as well as punitive damages. So far, respondent court has awarded damages of more than $420 million in this ongoing litigation.

In accordance with California Code of Civil Procedure section 877(e), Mr. Russo filed his petition for writ of mandate in the California Court of Appeal, First Appellate District, on August 16, 1988, which asked the court to direct respondent to vacate its good faith settlement orders and allow petitioner an opportunity to conduct discovery before holding a hearing to determine the good faith of the settlements at issue. The court of appeal denied the petition by order dated September 27, 1988. (Appendix, p. a23).

Mr. Russo filed his petition for review in the California Supreme Court on September 30, 1988. The supreme court issued its order denying review on October 27, 1988. (Appendix, p. a22). The fourteenth amendment due process issue was raised initially in the opposition papers filed in respondent superior court, and thereafter preserved through both stages of review, in the court of appeal and the supreme court.

REASONS FOR GRANTING THE WRIT

I. As applied by respondent superior court, sections 877 and 877.6 of the California Code of Civil Procedure violate the fourteenth amendment to the United States Constitution.

When a court is faced with statutes raising serious constitutional questions, the court must endeavor to construe those statutes in a manner that avoids any doubt concerning their validity. *Lynch* v. *Overholser,* 369 U.S. 705, 710-11, 8 L.Ed.2d 211, 215-16, 82 S.Ct. 1063 (1962); *Carlos* v. *Superior Court,* 35 Cal.3d 131,147, 672 P.2d 862, 197 Cal.Rptr. 79 (1983). Respondent court refused petitioner his constitutionally guaranteed right to challenge settling defendants' assertions of good faith. As a result, California Code of Civil Procedure sections 877 and 877.6 unconstitutionally deny petitioner's financial interest in the fairness of his codefendants' settlements and force him to bear a share of liability greater than that proportionate to his fault. The court could have avoided this error simply by postponing the hearing on settling defendants' motions for good faith approval to allow petitioner to conduct limited discovery and thereby meet his statutory burden of proof on the issue of good faith under Code section 877.6(d).

The importance of this issue extends far beyond the bounds of California law and affects every litigant brought into court as a defendant in any court in the United States. At stake is the basic question whether a party to a lawsuit can be deprived of property without benefit of a meaningful hearing, as a result of legal maneuvering and settlement between other parties to the suit.

California Code of Civil Procedure sections 877 and 877.6 are based on Section 4 of the Uniform Contribution Among Tortfeasors Act, which has been adopted in eighteen states. Many other states, including California, have enacted good faith settlement statutes, without adopting the entire Act. 12 West's U. Laws Ann. (1988 Supp.). These otherwise laudable statutes enacted in part to ease court congestion must not be misconstrued in ways that trample the constitutionally protected property

rights of litigants in derogation of due process notice and meaningful hearing as required by the fourteenth amendment to the United States Constitution.

A. Petitioner's financial interest in the outcome of this litigation is a constitutionally protected property interest.

The property interest at issue here is the absent tortfeasor's stake in the fairness of settlement between plaintiffs and codefendant joint tortfeasors. An unfair, disproportionally low settlement erroneously deemed to have been made in good faith under California Code of Civil Procedure section 877 forces the nonsettling defendant to bear a share of liability greater than that proportionate to his fault when, applying Code section 877(a), plaintiffs' recovery against all remaining nonsettling defendants is reduced only by the disproportionally low amount of the settlement. *Singer Co.* v. *Superior Court,* 179 Cal.App.3d 875, 890, 225 Cal.Rptr. 159 (1986).

The nonsettling defendant is precluded from seeking contribution or indemnity, even total equitable indemnity, from the defendant who settled and obtained good faith settlement approval. *Far West Financial Corp.* v. *D & S Co.,* 46 Cal.3d 796, 760 P.2d 399, 251 Cal.Rptr. 202 (1988). This protection is intended to accommodate the reasonable expectation of a settling tortfeasor that it can rely on the finality of its agreement with plaintiffs and thereby avoid the burden and expense of prolonged litigation. *Singer* at 884.

However, encouragement and finality of settlements are not the only objectives underlying the good faith settlement statutes. Equally important is the equitable allocation of costs among multiple tortfeasors. *Far West* at 810. It is a fundamental constitutional principle that no one shall be deprived of a substantial property right without due process of law. U.S. Const. amend. XIV, section 1. The pressure on courts to settle cases cannot justify trampling the nonsettling defendant's due process rights. *See, Far West* at 831 (Eagleson, J., concurring and dissenting).

B. Legislative programs intended to reduce court congestion do not justify deprivation of constitutionally protected rights.

In the course of hearings held in these consolidated cases since petitioner Russo was served on June 10, 1988, respondent court has repeatedly pressured the parties to expedite this litigation. At a status conference held July 13, just thirty-three days after this defendant was served, the court went so far as to announce that one reason cases would be set for trial at that early juncture was that the court needed to make use of the "big courtroom" specially set aside for this litigation. Transcript of July 13, 1988 Status Conference at Appendix p. a59. The court went on to set seven cases for trial commencing October 3, 1988, on grounds that the elderly plaintiffs in those seven cases were entitled to precedence under California Code of Civil Procedure section 36(a), which grants preference to litigants 70 years of age and older.

On several occasions, the court has referred to the California Trial Court Delay Reduction Act, Cal. Gov't. Code sections 68600-68615, to justify its management of this case. *E.g.*, July 13 Transcript, Appendix at p. a68. Pilot programs under the Delay Reduction Act have been established in nine counties designated by the Judicial Council of California. Santa Clara County, where respondent court is located, is not one of those nine pilot counties and has not established a pilot program under the Act. Nonetheless, in response to defense objections to early trial dates commencing within four months of service of summons and complaint, the court admonished defense counsel to consider California Supreme Court Chief Justice Malcolm M. Lucas' strong endorsement of the Act, *e.g.*, Sept. 20, 1987, Administrative Office of the Courts News Release No. 53 at 2. July 13 Transcript, Appendix at p. a86.

The court relied on the same rationale, that it was his judicial duty to move the case along as quickly as possible, to deny petitioner's request for postponement of the July 27 good faith hearing. Without the requested postponement, petitioner was unable

to meaningfully participate in the hearing. Having just been brought into the case the month before, petitioner had not had time to conduct the discovery necessary to allow him to meet his burden of proof under Code section 877.6(d).

C. Denial of petitioner's request for postponement of the good faith hearing was a violation of due process as defined by this Court.

The United States Constitution requires some form of notice and hearing in every case involving deprivation of property within the purview of the due process clause of the fourteenth amendment. How much process is required depends on the nature and stage of the proceedings, the temporary or permanent nature of the deprivation and the significance of the property interest involved. *Mathews* v. *Eldridge,* 424 U.S. 319, 333, 47 L.Ed.2d 18, 32, 96 S.Ct. 893, 902 (1976). In *Mathews,* the Court described a three part balancing approach for determining the requirements of due process.

First, the private interest that will be affected by official action must be identified. In this case the private interest at stake is significant and the official action taken by respondent court will permanently deprive petitioner. Respondent court's good faith settlement order leaves petitioner to face millions of dollars of claims in 477 cases, without recourse to contribution or indemnity. The ultimate judgment entered against him, and the expense he must bear along the way to fight those claims, force permanent deprivation of his property interests.

Next, the court must consider the risk of erroneous deprivation as a result of the procedures that were followed, and the probable value, if any, of additional or substitute procedural safeguards. The risk of error is obvious when, as occurred here, the party affected by the court's order is a defendant just served in ongoing litigation, who has had little time to become familiar with the facts of the case, yet bears the burden of proof on the very issue that will determine whether his property will be taken from him!

The value of procedural safeguards readily available to the court is likewise obvious. All petitioner needed was a reasonable postponement of the hearing on good faith, just long enough to allow him to conduct limited discovery on that issue. The California Court of Appeal considered this matter in *Singer*, a case with similar procedural facts. In *Singer*, a newly served defendant cross-complained against a defendant who had previously settled out of the case and obtained good faith approval. The court of appeal concluded that fundamental due process requires the nonsettling defendant be afforded a new hearing on the issue of good faith, and ruled that the nonsettlor also has the concurrent right to engage in discovery against the settling defendant to elicit evidence relevant to whether settlement was made in good faith. *Id.* at 895. Respondent court's order denying petitioner's request for postponement of the hearing is contrary to the rules of due process announced in *Singer*.

Consistent with *Singer*, this Court has made it clear that the opportunity to be heard at a meaningful time and in a meaningful manner is a fundamental requirement of due process. *Cleveland Bd. of Educ.* v. *Loudermill*, 470 U.S. 532, 84 L.Ed.2d 494, 105 S.Ct. 1487 (1985); *Goldberg* v. *Kelly*, 397 U.S. 254, 25 L.Ed.2d 287, 90 S.Ct. 1011 (1970). The purpose of notice under the due process clause is not only to apprise the individual of an impending hearing, but also to permit him adequate preparation for the hearing. *Memphis Light, Gas & Water Div.* v. *Craft*, 436 U.S. 1, 56 L.Ed.2d 30, 98 S.Ct 1554 (1978).

Respondent court's July 27 hearing was held on shortened notice of seven days (at most), contrary to the statutory notice period contained in California Code of Civil Procedure section 877.6(a), which requires at least twenty days' notice prior to a good faith settlement hearing. It was impossible for petitioner to prepare to meet his burden of proof in opposition to the good faith motions on such short notice. As a result of the court's refusal to postpone the hearing, meaningful participation was impossible.

The July 27 hearing and subsequent order merely adopted the outcome and language of respondent court's May 31 order,

entered before petitioner Stephen Russo was brought into this litigation as a defendant. Due process requires a realistic opportunity to challenge the threatened deprivation through presentation of evidence and argument. *Ohio Bell Telephone Co.* v. *Public Utilities Commission,* 301 U.S. 293, 31 L.Ed. 1093, 57 S.Ct. 724 (1937). The evidential facts taken into consideration must be made a part of the record. The transcript of the July 27 hearing, annexed hereto at Appendix p. a86, shows that respondent court failed to comply with this aspect of due process, and merely "rubber-stamped" his earlier order, with little or no explanation. It is elementary that the court's order must rest solely on legal rules and evidence adduced at the July 27 hearing, if that hearing is to be a meaningful exercise of due process. *Goldberg* v. *Kelly, supra.*

Finally, the third factor to be balanced according to *Mathews* is the court's interest in avoiding fiscal and administrative burdens associated with additional procedural safeguards. Postponement of the good faith settlement hearing for a short period of time to allow petitioner to conduct limited discovery on the issue of good faith would not have significantly burdened the court. The delay would not have affected respondent court's expedited October 3 trial date. As the case evolved, discovery conducted in the course of preparation for trial revealed most of the facts petitioner had hoped to uncover in order to oppose good faith settlement. Postponement of the good faith hearing would not have hindered any party's trial preparation, as both goals of discovery converged to reveal the same set of facts: that the parties who settled out of the litigation were the only truly culpable parties, and that they got out for much less than they should have paid in settlement.

D. The settlements were not made in good faith and should be set aside to allow petitioner to pursue cross-claims against the settling defendants.

In *Tech-Bilt* v. *Woodward-Clyde & Associates,* 38 Cal.3d 488, 698 P.2d 159, 213 Cal.Rptr 256 (1985), the California Supreme

Court identified the factors which must be taken into account in determining whether settlement was made in good faith pursuant to the intent and policies underlying California Code of Civil Procedure section 877.6:

1. A rough approximation of plaintiffs' total recovery and the settlors' proportionate liability;
2. The amount paid in settlement;
3. The allocation of settlement proceeds among plaintiffs;
4. A recognition that a settlor should pay less in settlement than he would if he were found liable after a trial;
5. The financial conditions and insurance policy limits of settling defendants; and
6. The existence of collusion, fraud or tortious conduct aimed to injure the interests of nonsettling defendants.

Id. at 499. Because petitioner, as the party asserting lack of good faith, has the burden of proof on that issue under Code section 877.6(d), he should be permitted to show that the settlement is so far "out of the ballpark" in relation to these factors as to be inconsistent with the equitable objectives of the statute. *Id.* at 499-500.

The requirement of good faith runs chiefly to the nonsettling defendant, not to plaintiffs. *Affiliated Hospital Products, Inc.* v. *Superior Court,* 201 Cal.App.3d 1271, 247 Cal.Rptr. 674 (1988). The court determining good faith has an obligation to guard against unfair prejudice to the nonsettling defendant. *Rankin* v. *Curtis,* 183 Cal.App.3d 939, 228 Cal.Rptr. 753 (1986).

Merely "cleaning up the pleadings" in a complex case is not a proper basis for finding good faith settlement, without first determining the relative liabilities of the parties and ensuring that settlement was negotiated in good faith with respect to the nonsettling parties. *Ex-Cell-O Corp.* v. *Holdener,* 181 Cal.App.3d

25, 226 Cal.Rptr. 57 (1986). A settlement dictated by the tactical advantage of removing deep pocket defendants because of the experts they could produce and the skilled trial attorneys they could retain, is not made in good faith consideration of the relative liability of all parties. *Commercial U. Ins. Co.* v. *Ford Motor Co.*, 640 F.2d 210, 213-14 (9th Cir. 1981). The converse tactical approach, settlement intended to set up a subsequent bad faith suit against a deep pocket insurance company, is likewise contrary to good faith determination of relative liabilities. *Greshko* v. *County of Los Angeles*, 194 Cal.App.3d 822, 239 Cal.Rptr. 846 (1987).

Discovery conducted to date in this litigation has revealed gross wrongdoing on the part of certain institutional defendants that may accurately be described as "deep pocket defendants," yet plaintiffs for reasons unknown to this defendant agreed nonetheless to settle their claims against those defendants. For example, settling defendant KMG Main Hurdman, a certified public accountant partnership, and several of its accountant employees have been disciplined by the California State Board of Accountancy for their dealings with Technical Equities Corporation which are the foundation of plaintiffs' claims against them in this litigation. *In the Matter of the Accusation Against: KMG Main Hurdman, et al.*, Decision No. 532, L-43680, California State Board of Accountancy (October 20, 1988) (hereinafter "Accountancy Board Decision"). (Annexed hereto at Appendix p. a136).

Specific misdeeds recorded in the Accountancy Board's Decision include the following. In June 1985, KMG Main Hurdman (hereafter "KMG") issued an unqualified report following its examination of the consolidated financial statements of Technical Equities Corporation (hereafter "TEC") as of March 1985. The individual KMG accountants who worked on this audit were aware that TEC had significant business relationships with Stern Management Associates (hereafter "SMA"). TEC board chairman Harry Stern was active in SMA and was trustee of several limited partnerships conducting significant business with TEC.

Mr. Stern refused KMG's request to allow access to SMA's books and records.

KMG wrongfully relied on representations made by TEC management that there were no related party transactions between TEC and SMA, and failed to expand the scope of the TEC audit to examine the activities of SMA and Harry Stern. The Accountancy Board found this to be an "extreme departure" from generally accepted auditing standards. The board ruled that KMG and its accountants were guilty of gross negligence in failing to exercise appropriate professional skepticism with regard to known and unknown related party transactions and in failing to investigate the activities of SMA and Harry Stern. *Accountancy Board Decision at p. a140.*

This is just one example of the culpable activities of KMG and its employees related to the TEC audits, which culminated in TEC issuing fraudulent and misleading annual reports to its shareholders and investors. Plaintiffs' claims in this litigation are based in large part on their alleged reliance on information contained in the TEC annual reports.

KMG paid 17,900,000 dollars to settle with plaintiffs. Although at first blush that may appear to be a huge sum of money, in the context of this litigation it is but a small part of the overall recovery sought by plaintiffs. As previously noted, plaintiffs claim to have suffered verifiable investment losses in excess of eighty-seven million dollars and allege an extensive list of related damages which have the potential to raise their total claims into the range of hundreds of millions of dollars. The sum total of verdicts already awarded totals more than 420 million dollars.

The settlement between plaintiffs and KMG does not meet the proportionality requirement of *Tech-Bilt*. Plaintiffs' likelihood of recovery at trial is high, as indicated by their success at trial so far. All of the institutional defendants have settled with plaintiffs, leaving only individuals such as petitioner Russo to bear the brunt of this litigation. The equitable policies underlying Code sections 877 and 877.6 are not served by forcing a disproportionate share of the total recovery on Mr. Russo.

The financial condition and insurance policy limits of settling defendants are also relevant in determining good faith settlement under *Tech-Bilt*. As a large, financially healthy institutional defendant publicly censured for the very same conduct which forms the basis for plaintiffs' allegations, KMG should bear a much larger share of plaintiffs' total recovery than it has paid in settlement.

Facts concerning KMG Main Hurdman included in this petition are intended to be illustrative of that defendant's involvement in the events which led to this litigation. The evidence adduced concerning other defendants who settled and obtained good faith approval is likewise incriminating and contrary to good faith settlement approval as defined in *Tech-Bilt*.

CONCLUSION

For these reasons, this petition for certiorari should be granted. In order to prevent permanent deprivation of petitioner's constitutionally protected property interests in derogation of the due process guarantees contained within the fourteenth amendment to the United States Constitution, this matter should be remanded to respondent superior court for appropriate disposition after full development of the facts concerning the lack of good faith of plaintiffs' settlements with petitioner's codefendants.

Respectfully submitted,

William P. Lucke

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Counsel of Record

APPENDIX

TECHNICAL EQUITIES DEFENDANTS

	Bank of the West
Herbert J.	Barovsky
Joel S.	Baylson
	Bear, Stearns & Co., Inc.
H. Conrad	Blackerby
James	Brooks
Joseph	Brooks
Robert D.	Campbell
Eugene A.	Cernan
	Continental Paragon Corporation
Ernest G.	DeLaOssa
Michael J.	Doherty
	Donald D. Doyle
Robert	Folen
Craig	Foster
Maria	Garza
William F.	Gates
Welson B.	Gibson
Albert	Green
Ridge L.	Harlan
	J.L.M. Consulting
	KMG Main Hurdman, a partnership
Paul C.	Knauff
Paul M.	Kouns
	Kouns, Marshall, Quinlivan & Severson
Richard G.	Landis
Marilee	Lau
Judd C.	Leighton
John A.	Lindberg
Douglas E.	Marshall
William E.	McKenna
James Lynn	McNeil
Robert	Nilssen
Linda A.	Penny
Jeff	Read
	Real Asset Management
Stephen J.	Russo

William	Schisano
	Security Pacific National Bank
	Speer Development Company aka Clarence H. Speer Jr. Enterprises, Inc.
Brett	Speer
Patrick	Speer
Timothy	Speer
	Speer/TEC Development Group, Inc.
	Stern Management Associates
Elsie	Stern
Harry C.	Stern
	Sutro & Co., Inc.
Robert W.	Vickrey
	Wahba Accounting Corp.
Ray M.	Wahba
Paul A.	Wehner
Fred	Winslow

TECHNICAL EQUITIES PLAINTIFFS

Mark	Abelson
James	Adams
Karen Y.	Adams
Roger	Adams
William	Adrian
David V.	Alaimo
	Ali Tahmouresi, M.D.
	Ali Tahmouresie, Voluntary Employee Benefit Account
	Ali Tahmouresie, Defined Benefit Pension Plan
Daniel C.	Allen (Kral and Allen)
	Allen Seid, M.D., Inc. Profit Sharing Trust
	Allen Seid, M.D., Inc.
Sandra	Alves
Tony	Alves
Alan	Anderson
Janet	Anderson
Norma	Arens
Esther	Asnes
Morton	Asnes
Anthony	Atwell
Susan	Atwell
Judith L.	Austin
Ruth M.	Austin
Donald	Avery
	Aztec Tile Company
Christopher D.	Bach
Ernest	Baer
Christopher	Bahr
Hartini	Bahr
Nell O.	Balcon
Vern	Balcon
Peter	Banaszak
Susan	Barbini
Beverly J.	Baron
Leo J.	Baroway
Brent	Barry
Drew	Barry

Jon	Barry
Pamela G.	Barry
Richard IV	Barry
Richard F. III	Barry
Shannon	Barry
Howard E.	Baughman
Dee C.	Baxter
Marcia L.	Baxter
Lloyd R.	Beadle
Chip	Beck
John C.	Becker
Alan	Bennett
Leon	Bennett
Jacqueline	Bentley
Jean	Bentley
John	Bentley
Thomas	Bentley
Elaine G.	Berman
Peter J.	Berman
Stephen	Berman
Anne	Betzenderfer
Betty	Bice
C. Leland	Bice
Helen	Bily
Raymond	Bily
Richard T.	Bily
Jim	Blackburn
Marguerite	Blackburn
Vivian	Blackburn
Joann	Blakeley
William	Blakeley
William	Bonnington
June	Bower
Molly	Bower
Jan	Bowman
David A.	Bradlow, Trustee of the Evelyn M. Sechter Trust
Michael L.	Brallier
Peter J.	Brallier
Donald	Brennan
Flora Ann	Brennan
David	Brooks
David I.	Brooks

Edwin	Brooks
Edwin E.	Brooks
Karen	Brooks
Karen	Brooks
Marianne	Brooks
	Brooks Case Goods, Inc. Profit Sharing Trust
Seymour	Bross
Alvin E.	Brown
Robert Burton	Brown
Brent R.	Browning
Brent	Browning
David	Browning
Rochelle	Brucker
Cecil Jr.	Busler
Norman S.	Buys
Gladys	Byrns
Charlotte	Bywater
Martin	Cadet
Stephen H.	Cadet
Vicki	Cadet
	Cadet & Associates, Inc. Defined Benefit Pension Plan
	Cadet & Associates, Inc.
Barbara	Callaway
James	Callaway
Julia C.	Campbell
William	Campbell
Donn	Campion
Barbara	Cardinal
Marilyn	Carleton
David J.	Casper
Joyce C.	Chan
Jambur E.	ChandraShekar
Shash Ikala	ChandraShekar
	Jambur E. ChandraShekar as Custodian for Aravind and Narendra Chandrashekar
Eugene P.	Charbneau
Milton	Chatton
Alan	Chausow

Deborah	Chausow
Janice	Choyce
John	Choyce
Ellen	Christensen
Norman	Christensen
Wayne S.	Chronister
James K.	Churchill
Spencer	Clark
Mark	Clear
Astrid	Cohen
Francine	Cohen
Gordon	Cohen
Joan	Cohen
Joseph	Cohen
Leslie	Cohen
Lillian	Cohen
Lillian	Cohen
Milton	Cohen
Milton	Cohen
Ronald	Cohen
Elizabeth B.	Coles
Stewart	Colpitts
Jack	Comer
Leslie H.	Conner
Roberta G.	Conner
Robert L.	Conner
Robert II	Conner
Evelyne	Conquaret
Caren	Cook
LaRue	Cook
Jodi	Corcoleotes
C. Frank	Crain
Judie	Crain
Gerald C.	Crary
James B.	Crocker
Margaret K.	Crocker
Catherine	Dalby
David	Dalby
William R.	Dastic
William E.	Dauer
Charles	Davis
Harry	Davis

Albert J.	Day Ortho Poole Trust American Foundation of Homeopathy
Regina M.	Day
Bonnie	De la Ossa
Priscilla	De Leon
Sharon	De Meurichy
Victor	Defino
Barbara	DeGroot
Donald	DeGroot
Lilia E.	Del Cioppo
John J.	Deller
Marilyn H.	Deller
Bryan	Deming
Richard	Derby
Stella	Derby
Richard	Derby, Jr., et al.
Bruce	Derbyshire
Peter	Derow
	Desert Leasing
Fred	Deubert
Helga	Deubert
Loretta M.	Dickinson
Ray A.	Dickinson
Frank	Dill
Melvin	Dinner
	Donna Mead, Trustee for Dixie Hollinger
Janet	Dore
John S.	Dore
Janet	Dore KEOGH
John S.	Dore KEOGH
Kenneth	Dorf
Don	Drysdale
Steven	Duddy
Susan	Duddy
William	Dwyer
	Earl Johnson Family Trust (Robinson v. Stern)
Betty Ann	Eaton

	Edwin Stempler, Defined Benefit Pension Plan
	Edwin Stempler, G.P.
Marie M.	Egkan
Jack	Erickson
Henry	Espinoza
Del	Fahrney
Thomas	Ferrara
Diane J.	Ferreira
Nancy Shumaker	Ferreira
Paul J.	Ferreira
Maurice E.	Fieux
Konrad	Fischer
Patricia A.	Fitzgerald
Bernard	Flood
Katherine	Flood
David	Flores
Christopher	Floyd
Mildred M.	Forrest
Ben	Foster
Dennis	Foster
Helen	Francis
Claudia	Frank
Grace G.	Frank
Lorant E.	Frank
Lorant	Frank IRA
Robert J.	Frascino
Vernon C.	Fraser
Iser	Freund
Lolita B.	Frye
Nancy	Funnell
Robert	Funnell
Harvey	Gabler
Helen	Gabler
John	Gamble
Susan A.	Garbini
Charles A.	Garfield
Edward	Garfield
Robert J.	Gaspich
Louis A.	Gaylord
Rae E.	Gaylord
Caroline	Getreu
Sunshine	Gibbs

Paul R.	Gibson
Robert	Gilder
Carmen	Glassman
Howard	Glatt
B. James	Glavas
Sigmund	Goffstein
E. Ronnie	Goldfield
Alissa	Goldring
Hasann	Goldring
	Alissa Goldring Revocable Trust
Hazel	Gomes
Frank	Gomez
Patricia	Gomez
Robert H.	Gordon
Helen J.	Gorman
Ralph	Grace
William H.	Graham
David J.	Graubard
Fred	Greene
Gemma B.	Greene
Ronald	Greene
Virginia	Greene
Gary I.	Greenwald
J. Conrad	Greenwald
Maria W.	Greenwald
Marion L.	Gregar
Reese P.	Griffith
Melvin	Gyer, et al.
Doris	Hale
Curt	Hall
Kenneth	Hamblin
Atlee	Hammaker
Virginia	Hammaker
D.J.	Happee, Jr.
Aaron	Harari
Marjorie	Harlan
	Harold Tarleton, M.D., Inc.
Brian	Harper
Edmund J.	Harris
James Scott	Harris
Joseph	Harrold
Marie J.	Harrold

Kevin R.	Haug
Kevin	Haug
Mary	Haug
Rodney	Haug
Roy	Haug
Richard	Hayes
	Hazelanna Powell IRA
Nanette M.	Heiman
Leonard	Helfand
	Heller Financial, Inc.
	Henry Little Tractor Service, Inc.
	Henry Little Tractor Service, Inc. Employee Pension Plan
Richard	Herbert
Robert A.	Hersch
Mack	Hickman
	M.P. Partnership
John S.	Hill
Kenneth W.	Hill
Daniel N.	Hoffman
Maurice C.	Hollingworth
	Homer Johnson Irrevocable Trust
	Homer Johnson Revocable Trust
Carol	Hoover
James	Hoover
Cecilia	Horn
W.H.	Howard
Roberta	Howard (aka Roberta Kruger)
Glenn E.	Hubbard
Marvin T.	Hubbard
Judine A.	Hubbs
Robert R.	Hubbs
Sandra L.	Hudak
Alfred	Hughes
John	Hulsbus
Helen	Hulsey
William	Isham
Lolita	Ison
Pascual	Izquierdo
	Jack Horton Drywall, Inc. Defined Benefit Pension Trust

	Jack Horton Management Defined Benefit Pension Trust
Paula	Jacobsen
Warren	Jacobsen
	Jambur Shekar Defined Benefit Pension Plan
	Jambur Shekar Medical Group, Inc.
	Jambur Shekar Money Purchase
	James P. Scherer, Irrevocable Childrens Trust
	James R. Powell-IRA
	James R. Powell-Keogh
	Jaymie Noelle Robinson Trust
Creed	Jenkins
Johnny I.	Jimenez
	John Deller M.D. Inc. Defined Benefit Pension Plan
Doris	Johnson
Doris	Johnson
Helen	Johnson
Homer	Johnson
Karlyle	Johnson
	Vandehurst, Kirsten
Gerald	Jones
Herbert	Jones
Myrna K.	Jones
Sean	Jones
	Jones Group, Inc.
	Joseph Thomas Pinckard, M.D., Inc. Profit Sharing Trust
	Joseph Thomas Pinckard, M.D., Inc. Defined Benefit Plan
Robert	Kahn
Edward	Kamps
Albert J.	Kanter
Billie	Kanter
Gloria	Kanter
Howard	Kanter
Mitchell	Kanter
Saul L.	Kanter
Henry P.	Kaplan

Rodney	Karnofel
Elizabeth	Kass
Irving H.	Kass
Herbert S.	Kaufman
Mark F.	Kaufman
Floyd	Kellman
Maurine	Kellman
Richard	Kershner
Michael F.	Killion
David	King
Georgia L.	Kirchmaier
	Klassen Tractor Services, Inc.
Michelle	Klesczewski
Stephen	Klesczewski
Blanche E.	Knauft
Robert T.A.	Knudsen
Irwin	Koff
James T.	Krejci
John	Kriesmer
Carol T.	Kusmierski
Janet	Kuypers
Alan	Lagod
Nicholas J.	Lampros
Gerald	Lancz
James	Langford
Brad	Larsen
George Jr.	Larsen
Jacqueline	Larsen
Henry	Lawrence
Kin L.	Lee
Pauline	Lee
Benjamin	Lehr
Barbara L.	Leichter
Heidi	Leichter
Lloyd L.	Leichter
Tia Danielle	Leichter
D. Kevin	Lester
Paul	Levin
Gail G.	Lincoln
Janis	Linde
Barbara	Linder
Esther	Linder
William	Linder

William	Linder
William R.	Linder
James	Linehan
Andrew B.	Lipton
Christina	Little
Henry	Little
	Lorant & Grace Frank Trust
John R.	Lucchetti
	Luculen Investment Limited
Anthony D.	Luras
Teresa L.	Luras
James D.	Luttroll
Irving	Lutz
Joseph	Machnick
Betty	MacKinnon
William	MacKinnon
Willis S.	Maitland
Albert	Mancuso
Clara	Mancuso
Alphonse	Manganello
Louella	Manganello
Joan	Manning
James V.	Marino
Allen R.	Marsan
Joanne	Marsan
Margaret A.	Marsan
R. Twain	Marsan
Margaret	Marshall
Susan	Marshall
Jill	Marten
Robert D.	Marten
Larry J.	Martin
Rod	Martin
	Martin & Vicki Cadet, Revocable Trust
	Maureen Scherer, Irrevocable Childrens Trust
Dan	Mayclin
Francis	McCaffrey
Lois	McCarger
Steven	McCatty
Randy	McClanahan

Donald A.	McClelland Executor for the Estate of Genevieve McClelland
Douglas	McConnell
Dorothy Jeanne	McElhatton
Charles T.	McGee
Thomas	McGuire (Coast Fabrication)
Lawrence Joseph	McKay
Odis	McKinney
Bernard F.	McLaughlin
Frew Donald	McMillan
Donna	Mead
Colleen	Medinnus
Gene	Medinnus
Thomas M.	Melin
Virginia W.	Melin
Alan C.	Merchant
Ann	Meyers
	Michael S. Mountanos and Melanie P. Mountanos, Trustees for the Michael S. Mountanos and Melanie P. Mountanos Revocable Trust
	Michael Mountanos, Trustee for the Mountanos Brothers Coffee Company Profit Sharing Plan, and Mountanos Brothers Coffee Company, a California corporation
	Michael Stanley Miller, Custodian for Julia Maureen and Scott James Scherer
Mathew	Millen
Richard B.	Miller
Katherine D.	Mitchell
	MK Villa La Veta
Michael	Mohr
Kirk	Monfort
Elizabeth R.	Montgomery
Peter T.	Montgomery
Peter T.	Montgomery IRA
Jorene G.	Moore
Laurie	Moose
Beverley	Morgan

Elliot	Morrison
Marlene	Morrison
	Mortensen
Mary	Moss
Gerda B.	Mosse
Alfred F.	Moura
Frances	Moura
Richard C.	Muschaweck
Shirley	Muschaweck
Mark A.	Nance
Brad	Neibaur
Bruce	Neibaur
Darwin	Neibaur
Ryan	Neibaur
Marilyn J.	Nellis
Fleet	Nelson
	Nelson Physical Therapy
John	Nerad
David	Nicholas
Henry S.	Nigro
	NOR-PEN INVESTMENT CO., INC., a California corporation; SENOR PEPE'S, a California corporation; and PETER J. BRALLIER, individually for the Defined Benefit and Pension Plans and Trusts of NOR-PEN INVESTMENT CO., INC. and SENOR PEPE'S
Thomas K.	Norrie
Thomas	O'Connor
Denis	Ochinero
Norman	Ochinero
Francis	Oliver
Marjorie	Oliver
Michael	Ornstein
Bertram H.	Osgood
Robert D.	Owchinko
Carolyn	Oyama
Terrell	Oyama
Ellen	Padon
Joseph	Padon (deceased)
Melanie	Pardini
Steve	Pardini

Peter	Pasini
Theresa	Pasini
Deborah	Pease
Jon	Pease
Joseph	Pellegrino
Glenn	Penistein
Charlene	Perhacs
Karen	Perkins
Tecla	Perrotta
Adrienne	Peschon
John	Peschon
Harvey	Peskin
Charles	Peters
Mary Ann	Peters
David L.	Peterson
Adolf	Pfefferbaum
Annabelle M.	Pfeil
Glenn W.	Pfeil
William R.	Pflieger Executor for Estate of Charles W. Pflieger
	Philip R. Sanfilippo, M.D., Inc. Pension Plan
	Philip R. Sanfilippo, a Profit Sharing Trust
Joseph Thomas	Pinckard III
Susan J.	Pinckard
Clarence	Pinkerton
Beverly	Piotti
Ronald P.	Portnoff
Vicki	Portnoff
Hazelanna E.	Powell
James R.	Powell
	Powell Investments—P.S. Tr.
	Powell Investments, Inc.
Deborah	Preston
Erma	Procaccio
Pat J.	Procaccio
Patricia	Procaccio
Fusae M.	Pryde
Georgette	Psaris
	R.C. Thomas Co., Inc. dba R.C. Thomas Co., Inc. Defined Benefit Pension Plan

William	Rea
Marshall W.	Reed
Jack	Renner
Ronald	Restifo
Gary	Robbins
Heidi	Robbins
Michael	Robbins
Edith	Roberts
Edith R.	Roberts
Richard	Roberts
Daniel	Robinson
David	Robinson
Jaymie Noelle	Robinson
Jon	Robinson
Kenneth	Robinson
Nicole	Robinson
Violet	Robinson
	Rodenbaugh
Hase	Rodenbaugh
	Rollins Bordick Hunter of Northern California, Inc.
Lawrence	Romaneck
Richard	Romanski
	Ronald S. Hay Revocable Trust Leslie J.B. Hay Irrevocable Trust
Eleanor	Rosburg
Belle	Rose
Norman	Rosenberg
Fred	Rosenberger
Irmgard	Rosenberger
Kyle Jr.	Rote
Willard	Rowland
Mitzie	Rubenstein
Ann Braschi	Rudini
Bernard	Rudin
Holly	Rudin
Melvin	Rudin
Victorine	Rudin
Franklin	Rumore
Elizabeth B.	Ryan
Mary Beth	Ryan
Peter	Ryan
Robin	Sales

	San Jose Ear, Nose & Throat Medical Clinic, et al.
Coy D.	Sanders
Loretta L.	Sanfilippo
Monica	Sanfilippo
Philip R.	Sanfilippo
Susan	Sanfilippo
Walter	Saphir
	Saul Kanter, Trust #3
	Saul Kanter, Trust #14
Aldo	Scandinaro
Mary	Scandinaro
Maureen	Scherer
James P.	Scherer
Melvin	Schmucker
Richard	Schriger
Errol D.	Schubot
Cynthia	Schultz
Seymour	Schultz
Thelma	Schweiger
	The Scott Trust
	Sechter Trust
Allen	Seid
Mary	Seid
Frances B.	Shade-Peterson
Suresh C.	Shah
Vicky S.	Shah
Hannan	Shammas, et al.
James	Shaug
Thomasen	Shaw
Virginia	Shaw
Willard	Sheppard
Manfred	Siegler
Robert M.	Silver
Frank	Simas
Murlie	Simas
Lon	Simmons
Richard P.	Singer
John	Skelton
Virginia	Skelton
Richard	Slavin
Debra A.	Sloan

Phil S.	Sloan
Bertha Buchalter	Smith
Robert T.	Smith
Troy H.	Smith
Stephen	Smookler
Elena	Sonsangterm
Keith C.	Soper
Kenneth	Sorensen
Eligio	Soriano
George	Sowlakis
Fred	Spatz
	SRE Lakeshore
	Stanford Enterprises
Dennis	Stark
Hazel	Steeprow
O.M.	Steeprow
Cynthia L.	Stein
Edwin	Stempler
Norma	Stempler
Edwin	Stempler, GP
Karen W.	Stern
William Payne	Stewart
M. Lee	Stone
Richard A.	Stone
Scott	Stringer
Lisa	Sumner
Martha J.	Sumner
Barbara M.	Sumner Woods
Judith	Svihla
Edward	Swayney
Joanne	Swayney
Loraine O.	Swayney
Fritz	Swenson
Fritz W.	Swenson
Kathleen	Swenson
Robin E.	Swenson
	Swenson Construction Company, Inc. Money Purchase Pension Plan
	Swenson Construction Company, Inc. Profit Sharing Plan
Stephen C.	Sziebert
Ali	Tahmouresie

Eleanor	Tahmouresie
Maria	Tahmouresie (by her Guardian ad Litem, Ali Tahmouresie)
Ali	Tahmouresie, M.D.
Ada	Tal
Harold	Tarleton
Lucinda	Tarleton
Ferdi	Taygan
John	Taylor
Fred W.	Tempey
William W.	Theiss
Maren	Thomas
Richard C.	Thomas
David Vernon	Thomas, et al.
Thomas L.	Thomason
Elizabeth	Thompson
Richard F.	Thompson
Vola R.	Tietge
Frank M.	Tietge
	Tietge Consulting, Inc. Defined Benefit Pension Plan
	Tietge Consulting, Inc.
Nola	Tirpak
George W.	Trager
Jeannie	Trudell
Karen	Trudell
Marie	Trudell
Raymond	Trudell
Richard	Trudell
Maria D.	Trudell (Custodian for K. Jennifer Schug)
	Trudell Construction Defined Benefits Pension Plan
Carol	Turner
Charles	Tuzar (Wesco Elevator)
Alfred	Ursillo
Sally M.	Ursillo
Edward	Vadnais, Ashe, Anderson
Suzanne	Vadnais
	Valley Psychiatric Medical Clinic
Mark	Van Eeghen
George	Van Fossen

Kirsten	Vanderhurst
Leon	Velge
Dianne	Vincent
Lillian	Vincent
Robert	Vincent
	Violet Robinson Revocable Trust
	Violet Robinson Irrevocable Trust
Leland	Vogel
Paula	Von Simson
James M.	Wallace
Carol J.	Wallmark-Taggart
	Walnut Creek Ambulatory Surgery Center Clinic, Inc.
Mary Ann	Warfield
Donald	Wasserman
Bruce	Watts
Hubert	Wax
Rose	Weiner
Patrick E.	Wherry
Lucille	Whitely
Kathy	Whitworth
Patricia	Williams
Robert G.	Williamson
Linda	Winter
William	Winter
Stephen	Wollack
Maureen A.	Wright
Patrick E.	Wright
Leo N.	Zabel

ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL

1st District, Division 4, No. A043281

S007357

IN THE

SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

RUSSO, *Petitioner,*

v.

SUPERIOR COURT OF THE COUNTY OF SANTA CLARA,
Respondents.

BEAR, STEARNS & CO., INC.,
Real Party in Interest

Petition for review DENIED.
Kaufman, J., is of the opinion the petition should be granted.

/s/
Chief Justice

(Filed October 27, 1988)

CALIFORNIA COURT OF APPEAL

FIRST APPELLATE DISTRICT

DIVISION FOUR

STEPHEN J. RUSSO

v.

SUPERIOR COURT, SANTA CLARA COUNTY
BEAR, STEARNS & CO., INC. *et al.*

A043281
Santa Clara County
Sup. Ct. No. 600306

Coordinated Proceeding
Master File No. 1991

BY THE COURT:

The petition for writ of mandate is denied.

Counsel for petitioner is directed to inform all persons appearing on the Master Service List of this order by 5:00 p.m., September 29, 1988.

(Poche, Acting P.J.; Channell, J. and Perley, J. participated in the decision.)

Dated: September 22, 1988 /s/ (Anderson) P.J.

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Coordinated Proceeding Special Title (Rule 1550(b)) In Re Technical Equities Litigation This Document Relates To: Those Actions Identified in Exhibit "A" Hereto	Master File No. 1991 Santa Clara County Superior No. 600306 Notice of Entry of Omnibus Order and Omnibus Order Approving Settlements Entered Into by Certain Plaintiffs and Certain Defendants

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 31, 1988, Orders were entered determining that certain settlements in each of the actions identified in Exhibit "A" hereto are in good faith pursuant to C.C.P. Sections 877 and 877.6.

PLEASE TAKE FURTHER NOTICE that the following Omnibus Order was entered by the Court on May 31, 1988. On May 18, 1988, at 9:00 a.m., on shortened time by order of the Court, the motion of certain defendants for confirmation of their settlements with certain plaintiffs came on for hearing before the Court. A separate, duly noticed hearing pursuant to C.C.P. Section 877.6 was held on May 25, 1988 for the settlement of defendant Paul A. Wehner. All parties were represented by counsel. Having considered all of the evidence and argument, both oral and documentary, and good cause appearing therefor, THE COURT HEREBY FINDS:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Settlements in each of the actions identified in Exhibit "A" hereto (the "settlements") have been reached between each of the plaintiffs therein and defendants KMG Main Hurdman,

Marilee P. Lau, Frederic D. Winslow, Robert W. Vickrey and Robert E. Nilssen, Security Pacific National Bank, Bear, Stearns & Co., Inc., Michael J. Doherty, Jr., Kouns, Marshall, Quinlivan & Severson, Paul M. Kouns, Douglas E. Marshall, Michael Quinlivan, Lawrence L. Severson, Bank of the West, Robert D. Campbell, William F. Gates, Ridge L. Harlan, Richard G. Landis and William E. McKenna, Ernest G. de la Ossa, Paul C. Knauff and Paul A. Wehner (collectively the "Settling Defendants").

2. The settlements were made in good faith. Applying C.C.P. Sections 877 and 877.6 and the criteria established in *Tech-Bilt* v. *Woodward-Clyde Assocs.*, 38 Cal. 3d 488, 213 Cal. Rptr. 256 (1985), the settlements in these actions are "within the ball park" of the factors set forth by the *Tech-Bilt* case, including being within the "reasonable range" of the Settling Defendants' proportional share of potential comparative liability for plaintiffs' injuries, if plaintiffs were to prevail. Nothing in this order shall be deemed to constitute an admission or finding of liability.

3. There is no hint of collusion, fraud, tortious conduct or intent to harm the non-settling parties on this record.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The settlements in each of the actions identified in Exhibit "A" hereto are determined to be made in good faith under Sections 877 and 877.6 of the California Code of Civil Procedure.

2. Pursuant to C.C.P. Section 877(b), the Settling Defendants are discharged from all liability for any contribution to any other party to the above entitled action.

3. Pursuant to C.C.P. Section 877.6(c), all other joint tortfeasors or co-obligors with respect to the above-entitled action are barred from asserting any further claims against the Settling Defendants for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.

4. Pursuant to C.C.P. Section 877.6(e), service of this Notice of Entry of Order and Order shall constitute written notice of this Court's determination that the settlements are in good faith, and shall be deemed sufficient notice pursuant to this section and C.C.P. Section 1019.5.

DATED: May 31, 1988

/s/
Conrad L. Rushing
Judge of the Superior Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

Coordinated Proceeding Special Title (Rule 1550(b)) In Re Technical Equities Litigation This Document Relates To: All Actions	Coordinated Proceeding Master File No. 1991 Santa Clara County Superior No. 600306 Notice of Entry of Omnibus Order and Omnibus Order Approving Settlements Entered Into by Certain Plaintiffs and Certain Defendants

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 29, 1988, the following omnibus order was entered by the Court. On July 27, 1988, at 9:00 a.m., on shortened time by order of the Court, the motion of certain defendants for confirmation of their settlements with certain plaintiffs came on for hearing before the Court. This was the second hearing of the Court on this issue, noticed for the specific purpose of allowing newly named defendants to be heard regarding the good faith of the settlements at issue. Having considered and reconsidered all of the evidence and argument, both oral and documentary, and good cause appearing therefore, THE COURT HEREBY FINDS:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Settlements in each of the actions identified in Exhibit "A" hereto (the "Settlements") have been reached between each of the plaintiffs therein and defendants KMG Main Hurdman, Marilee P. Lau, Frederick D. Winslow, Robert W. Vickery and Robert E. Nilssen, Security Pacific National Bank, Bear, Stearns & Co., Inc., Michael J. Doherty, Jr., Kouns, Marshall, Quinlivan & Severson, Paul M. Kouns, Douglas E. Marshall, Michael Quinlivan, Lawrence L. Severson, Bank of the West, Robert D.

Campbell, William F. Gates, Ridge L. Harlan, Richard G. Landis and William E. McKenna, Ernest G. De La Ossa, Paul C. Knauff and Paul A. Wehner (collectively the "Settling Defendants").

2. The Settlements were made in good faith. Applying CCP §§ 877 and 877.6 and the criteria established in *Tech-Bilt* v. *Woodward-Clyde Associates*, 38 Cal. 3d 488, 213 Cal. Rptr. 256 (1985), the Settlements in these actions are "within the ballpark" of the factors set forth by the *Tech-Bilt* case, including being within the "reasonable range" of the Settling Defendants' proportional share of potential comparative liability for plaintiffs' injuries, if plaintiffs were to prevail. Nothing in this Order shall be deemed to constitute an admission or finding of liability.

3. There is no hint of collusion, fraud, tortious conduct or intent to harm any of the non-settling parties, including newly named parties, on this record.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Settlements in each of the actions identified in Exhibit "A" hereto are determined to be made in good faith under §§ 877 and 877.6 of the California Code of Civil Procedure.

2. Pursuant to CCP § 877(b), the Settling Defendants are discharged from all liability for any contribution to any other party, including newly named parties, to the above noted actions.

3. Pursuant to CCP § 877.6(c), all other joint tortfeasors or co-obligors with respect to the above noted actions are barred from asserting any further claims against Settling Defendants for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.

4. Pursuant to CCP § 877.6(e), service of this Notice of Entry of Order and Order shall constitute written notice of this Court's determination that the Settlements are in good faith, and shall be deemed sufficient notice pursuant to that section and CCP § 1019.5.

DATED: July 29, 1988

/s/

The Honorable Conrad L. Rushing
Judge of the Superior Court

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
COURTROOM NO. 100
BEFORE HONORABLE CONRAD L. RUSHING, JUDGE

Coordinated Proceeding,	Coordinated Proceeding
Special Title (Rule 1550(B))	Master File Number 1991
Technical Equities Case	Santa Clara County
	Superior No. 600306

SANTA CLARA, CALIFORNIA, JULY 13, 1988, 9:05 O'CLOCK A.M.

THE COURT: COUNSEL, GOOD MORNING.

BILL STONER CAME TO SEE ME JUST NOW AND ASKED IF IT WOULD BE POSSIBLE FOR THE DEFENSE ATTORNEYS TO—HE DIDN'T PUT THE QUESTION EXACTLY THIS WAY—BUT HE TOLD ME THAT THE EFFECT OF OUR FORM WAS TO REQUIRE EVERY DEFENDANT TO FILL OUT ONE. THAT, I THINK IS UNNECESSARY. I AM PRIMARILY INTERESTED IN USING THAT FORM AS A MEANS OF EVALUATING THE CASE, SETTING IT FOR TRIAL, OR SENDING IT TO ARBITRATION. SO IF YOU CAN COLLABORATE, THAT IS TO SAY, THE DEFENSE LAWYERS CAN COLLABORATE ON THE FORMS THAT WOULD BE USEFUL TO ME.

I DO WANT PLAINTIFFS TO FILL THOSE FORMS OUT WITH AS MUCH CARE AS POSSIBLE.

CALL THE CALENDAR, JOHN.

THE CLERK: NUMBER 1, WEDBUSH, NOBLE, COOKE, INC., VS. BENJAMIN FOSTER.

MS. MC COY: PATRICIA MC COY OF KEESAL, YOUNG & LOGAN FOR WEDBUSH.

MS. SCHROEDER: YOUR HONOR, I BELIEVE MR. RUBY HAS STEPPED OUT OF THE ROOM. I BELIEVE WE REPRESENT THE DEFENDANT IN THIS CASE. WILL YOU PASS THIS MATTER FOR THE MOMENT?

THE COURT: WE WILL PASS IT.

THE CLERK: NUMBER 2, BARRETT VS. STERN MANAGEMENT ASSOCIATES.

MR. RASCH-CHABOT: YOUR HONOR, JOE RASCH-CHABOT FOR STERN MANAGEMENT ASSOCIATES AND HARRY STERN.

MS. WEINER: YOUR HONOR, WE MAY REPRESENT BRUCE BARRETT IN THE SUPERIOR COURT ACTION. WE HAVE NO REPRESENTATION IN THE MUNICIPAL COURT ACTION, KNOW NOTHING ABOUT IT.

THE COURT: THIS IS A MUNICIPAL COURT ACTION, JOHN?

THE CLERK: YES, IT IS PART OF THE COORDINATED CASE.

THE COURT: YES. SO YOU ARE NOT THE ATTORNEYS FOR BARRETT?

MR. COTCHETT: WE ARE NOT, BUT, YOUR HONOR, OBVIOUSLY WHAT HAPPENED IS THE CASE CAME TO US AND SOME PRIOR LAWYER JUST HAPPENED IN THIS, FILED A MUNI COURT CASE IS, I AM SURE, WHAT THE RESULT IS. WE WILL ASSUME RESPONSIBILITY FOR IT AND GET IT CLEARED UP RIGHT AWAY.

THE COURT: THE ATTORNEY SHOWN IS COHN. C-O-H-N.

MR. COTCHETT: WHAT COHN DOES IT SAY?

THE COURT: I DON'T KNOW.

MS. WEINER: THAT WOULD BE CLASS.

THE COURT: JOHN, IS THIS MU-126197, SAN JOSE NUMBER?

THE CLERK: SANTA CLARA MUNI.

THE COURT: SANTA CLARA MUNI? WE WILL PASS IT.

THE CLERK: VOGEL VS. TECHNICAL EQUITIES CORPORATION.

MR. TRUSSELL: SAMUEL TRUSSELL, YOUR HONOR, ON BEHALF OF VOGEL, PLAINTIFF.

MS. SAWYER: KIMBERLY SAWYER FOR DEFENDANTS CONTINENTAL PARAGON, BRET SPEER, PATRICK SPEER, TIMOTHY SPEER, JAMES BROOKS, SPEER DEVELOPMENT COMPANY.

THE COURT: SAY YOUR NAME AGAIN?

MS. SAWYER: KIMBERLY SAWYER.

MR. DICKEY: GOOD MORNING, YOUR HONOR. JOHN DICKEY FOR SUTRO & COMPANY.

MR. KAMAN: YOUR HONOR, MY CLIENTS IS IN ALL 40 CASES.

THE COURT: YOU CAN STATE THAT FOR THE RECORD NOW. MR. RASCH-CHABOT?

MR. RASCH-CHABOT: YES, THE SAME. MY CLIENT IS A DEFENDANT IN ALL CASES, STERN MANAGEMENT ASSOCIATES, HARRY STERN AND ELSIE STERN AS WELL.

THE COURT: ALL RIGHT.

MR. JOHNSTON: YOUR HONOR, ALAN JOHNSTON OF MORRISON & FOERSTER FOR BEAR STEARNS. THIS IS ONE OF THE CASES, THE NUMBER ON HERE WHICH WE ARE IN THE PROCESS OF SETTLING. WE HAVEN'T ACTUALLY GOT THE DISMISSALS TO YOU FOR FILING YET, BUT DO YOU WANT APPEARANCES FROM THE LAWYERS THAT ARE IN THAT SITUATION?

THE COURT: I AM INTERESTED IN THAT PART OF IT BECAUSE WE HELD A 877 HEARING, AND THE COURT WAS INFORMED THAT SOME CASES WERE

SETTLED. IF THESE CASES HAD BEEN SETTLED, THAT IS FINE.

MR. JOHNSTON: WE ARE JUST FINISHING THE PAPERWORK ON IT.

THE COURT: THIS IS INVOLVED IN THE SETTLEMENT WITH THE TEPLG PLAINTIFFS?

MR. JOHNSTON: THAT'S CORRECT. THIS IS ONE OF MR. TRUSSELL'S CLIENTS, AND IT IS ON THE LIST OF CASES THAT ARE BEING SETTLED.

THE COURT: IS CONTINENTAL PARAGON THE SETTLING DEFENDANT?

MS. SAWYER: NO, YOUR HONOR. WE HAVE JUST BEEN SERVED WITH A COMPLAINT. OUR ANSWER HAS NOT YET BEEN FILED. I BELIEVE OUR ANSWER IS DUE JULY 15TH. AS FAR AS I KNOW, NOBODY HAS CONTACTED US CONCERNING SETTLEMENT.

MR. TRUSSELL: YOUR HONOR, IF I MIGHT SPEAK, THIS WAS ALSO ORIGINALLY A MUNI COURT ACTION. IT WAS TRANSFERRED TO THE SUPERIOR COURT, AND THE ORDER WAS SIGNED APRIL 25TH, 1988. IT WAS A SITUATION WHERE SOMEONE FILED A MUNI COURT ACTION ORIGINALLY YEARS AGO.

THE COURT: HOW MUCH IS INVOLVED IN THIS CASE?

MR. TRUSSELL: $14,000.

THE COURT: $14,000? SO ALL OF THE DEFENDANTS IN THIS CASE, VOGEL VS. T-E, EXCEPT FOR CONTINENTAL PARAGON HAVE ESSENTIALLY SETTLED OUT; AM I RIGHT?

MR. DICKEY: YOUR HONOR, THAT IS NOT RIGHT.

THE COURT: SUTRO IS IN THE SAME POSITION AS CONTINENTAL PARAGON?

MR. DICKEY: I HATE TO SAY IT, BUT WE WERE RECENTLY ADDED TO THE LAWSUITS.

MR. RASCH-CHABOT: YOUR HONOR, THE DEFENDANTS WHO JUST WENT TO TRIAL HAVE NOT SETTLED OUT EITHER.

MR. BLEARS: YOUR HONOR, NORMAN BLEARS FOR CERTAIN OF THE OUTSIDE DIRECTORS. THE THREE OUTSIDE DIRECTORS WERE GRANTED SUMMARY JUDGMENT IN THE LEAD CASES AND I BELIEVE ARE STILL IN MOST OF THESE CASES, AND WE WILL BE DISCUSSING THAT IN THE COMING DAYS AND WEEKS, BUT THERE MAY BE SOMEWHERE THEY ARE TECHNICALLY NAMED AT THIS POINT, ALTHOUGH THEY HAVE BEEN SETTLED OUT, THE SAME AS MR. JOHNSTON'S SITUATION, BUT WE DO HAVE THE MATTER OF EUGENE CERNAN. TOM DOYLE, AND WALTER GIBSON, AND THOSE PEOPLE ARE STILL IN THESE CASES FOR THE MOMENT.

MS. HALE: YOUR HONOR, CANDACE HALE FOR JUDD LEIGHTON, ONE OF THE OUTSIDE DIRECTORS. HE IS IN A SIMILAR SITUATION TO EUGENE CERNAN AND TOM DOYLE IN THAT HE IS IN MOST OF THESE CASES.

MR. ROTHSCHILD: YOUR HONOR, STEPHEN ROTHSCHILD FOR DEFENDANT JEFF REED.

THE COURT: MR. ROTHSCHILD, YOU MUST WEAR A COAT WHEN YOU ARE IN MY COURTROOM.

MR. ROTHSCHILD: I'M SORRY, SHALL I CONTINUE OR SHALL I—

THE COURT: NO, GO GET YOUR COAT AND THEN COME BACK.

MS. GRUEN: GOOD MORNING, YOUR HONOR. JAN GRUEN REPRESENTING ERNEST DE LA OSSA. MR. DE LA OSSA HAS TECHNICALLY SETTLED OUT OF THE MAJORITY OF THESE CASES ALTHOUGH WE HAVE NOT YET FILED DISMISSAL, AND HE IS ALSO NAMED IN SOME OF THE CASES THAT ARE CURRENTLY LISTED HERE.

MR. MC CABE: GOOD MORNING, YOUR HONOR. MICHAEL MC CABE. MY CLIENT, PAUL WEHNER, HAS SETTLED WITH THE PLAINTIFFS' LITIGATION GROUPS SIMILAR TO MR. BLEARS AND OTHER ATTORNEYS, BUT I HAVE THREE OTHER CLIENTS WHO HAVE RECENTLY BEEN SERVED AS DOE DEFENDANTS, AND THOSE ARE CONRAD BLACKERBY, CRAIG FOSTER AND JOSEPH BROOKS.

THE COURT: JOSEPH BROOKS? WHO IS JOSEPH BROOKS?

MR. MC CABE: HE IS A FORMER VICE-PRESIDENT OF TECHNICAL EQUITIES, YOUR HONOR.

THE COURT: ASSOCIATED WITH ONE OF THE SUBSIDIARIES?

MR. MC CABE: NO. HE WAS A VICE-PRESIDENT IN THE OPERATIONS PORTIONS.

THE COURT: ALL RIGHT. THANK YOU.

MR. WALTER: GOOD MORNING, YOUR HONOR. ALLAN WALTER REPRESENTING STEPHEN J. RUSSO. HE HAS JUST BEEN SUBSTITUTED IN AS DOE 20, AND WE HAVE JUST BEEN SERVED WITH 477 COMPLAINTS.

THE COURT: STEPHEN RUSSO?

MR. WALTER: STEPHEN J. RUSSO WAS DOE 20.

THE COURT: HE WAS WHAT?

MR. WALTER: HE HAS BEEN SUBSTITUTED AS 20.

THE COURT: TELL ME ABOUT MR. RUSSO? WHAT POSITION DID HE HOLD?

MR. WALTER: HE WAS A VICE-PRESIDENT FOR ABOUT ONE YEAR BETWEEN '84 AND '85.

THE COURT: IN REAL ESTATE?

MR. WALTER: I AM NOT SURE, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. WALTER: NEVER MET MR. RUSSO.

THE COURT: OH.

MR. IRVINE: YOUR HONOR, PERRY IRVINE APPEARING FOR ALBERT J. GREEN. MR. GREEN LIKEWISE HAS RECENTLY BEEN NAMED AS, I THINK, DOE 15 IN MR. COTCHETT'S COMPLAINT, AND MR. RUBY'S COMPLAINT, AND HE WAS A VICE-PRESIDENT. HE HAD SOMETHING TO DO WITH REAL ESTATE.

THE COURT: I KNOW WHO MR. GREEN IS.

MR. IRVINE: I DIDN'T WANT TO HEAR THAT. YOUR HONOR, I AM TRYING TO FIGURE OUT WHICH CASES I AM APPEARING ON HERE.

THERE IS A VOGEL CASE LISTED UNDER, I THINK, MR. COTCHETT'S CASE, SUPERIOR COURT CASE WITH A DIFFERENT NUMBER. WE WERE SERVED ON THAT ONE. WE WEREN'T SERVED ON THE MUNI COURT CASE.

MR. TRUSSELL: THAT IS TRUE, YOUR HONOR.

MR. IRVINE: I HAVE VOGEL VS. KMG, 653172.

THE COURT: MY CLERK TELLS ME THAT THE SUPERIOR COURT, VOGEL CASE, IS SCHEDULED FOR HEARING ON STATUS SOME TIME IN THE FUTURE. WELL, I THINK I SEE A PATTERN HERE. I THINK I SEE DEFENDANT SPEER TECH, SUIT ON BLACKELBY, FOSTER, BROOKS, RUSSO AND GREEN AS BEING PERSONS WHERE ALL OF THE CASES -- IN OTHER WORDS, THE WHOLE, ALL OF THE COORDINATED CASES ARE STILL ALIVE AS TO THOSE DEFENDANTS.

MR. COTCHETT: RIGHT. LET ME SAY IF I COULD JUST TAKE A SHOT, 30 SECONDS, IN CLEARING UP WHERE WE ARE.

FIRST OF ALL, OUR NOTICE OF THE STATUS CONFERENCE TODAY, 1 THROUGH 40, IT IS FAIR TO SAY THAT ALL CASES ON THERE ARE REPRESENTED IN AN INDIVIDUAL CAPACITY EXCEPT THREE. IF I CAN JUST IDENTIFY THOSE, AND I WOULD ASK FOR HELP FROM ANYONE HERE WHO KNOWS OF OTHERS.

THE FIRST ONE IS NUMBERED 14. THAT IS HANNAH SHAMMAS. THAT IS A CLASS ACTION, AND I BELIEVE THAT IS REPRESENTED BY MR. PLUTZIK; IS THAT CORRECT?

MR. PLUTZIK: YES.

MR. COTCHETT: 14 IS A CLASS ACTION, NOT AN INDIVIDUAL ACTION.

NUMBER 18, DAVID VERNON THOMAS VERSUS HERBERT BAROVSKY, THAT, I BELIEVE, ALSO IS A CLASS ACTION. AND IF I COULD JUST ASK THROUGH THE COURT, MR. PLUTZIK ALSO REPRESENTS THAT CASE?

MR. PLUTZIK: YES.

MR. COTCHETT: THE NEXT CASE IS NO. 22, MELVIN GUYER VS. BAROVSKY, ET AL. THAT IS A CLASS ACTION TO MY KNOWLEDGE.

MR. PLUTZIK: YES, THAT'S CORRECT.

MR. COTCHETT: SO THOSE ARE THE ACTIONS ON THERE.

THE COURT: IS THAT MR. PLUTZIK?

MR. COTCHETT: THOSE ARE THE THREE ACTIONS ON THERE THAT ARE NONINDIVIDUALS.

NOW, SPEAKING TO THE INDIVIDUAL CASES, WE REPRESENT SEVERAL, AND I COULD CALL THEM OUT BY NUMBER AS DOES MR. RUBY AND MR. ANDERSON HERE REPRESENTED BY MR. TRUSSELL TODAY.

THERE ARE SEVERAL CASES ON HERE WHICH ARE INDIVIDUAL NON-TEPLG. FOR EXAMPLE, I NOTICED, JUST TO CALL ONE OUT, THE EAR, NOSE, NO. 31, THAT IS THE SAN JOSE EAR, NOSE & THROAT MEDICAL VS. KMG. THAT WOULD BE AN INDIVIDUAL NON-TEPLG, AND IF WE CAN JUST IDENTIFY 1 THROUGH 40 WHO IS NON-TEPLG, WE COULD THEN ASCERTAIN THAT NOBODY HAS SETTLED WITH THOSE PEOPLE AND ALL PEOPLE FROM WHAT I

UNDERSTAND. I WILL THEN IDENTIFY FOR THE COURT WHICH I THINK WILL BE THE BALANCE OF 1 THROUGH 40 OF THE MAJORITY OF THEM WHO WE HAVE SETTLED WITH AND EXACTLY WHO WE HAVE SERVED PURSUANT TO YOUR ORDER, AND WE CAN GO FROM THERE.

THE COURT: THAT IS A GOOD IDEA. ALL RIGHT. OF THESE 40 CASES, AND EXCLUDING THE CLASS CASES, WHO IS HERE AS PLAINTIFF'S COUNSEL, NON-TEPLG?

MR. STONER: YOUR HONOR, WILLIAM STONER ON BEHALF OF SECURITY PACIFIC NATIONAL BANK REPRESENTING THE PLAINTIFFS IN NOS. 24, 25 AND 23 THROUGH 40. ALTHOUGH WE DON'T HAVE ANY RECORD OF NO. 33—

THE CLERK: THAT WAS OFF CALENDAR. THAT IS ONE WHICH WAS A MISTAKE.

THE COURT: 31 THROUGH 40, MR. STONER, ARE YOU READY TO GO TO TRIAL ON THESE CASES?

MR. STONER: NO, WE ARE NOT.

MR. COTCHETT: EXCUSE ME? COULD WE HAVE THE NUMBERS AGAIN, YOUR HONOR, 24, 25—

MR. STONER: 34 THROUGH 40. I AM UNCLEAR ABOUT NO. 33.

THE CLERK: THAT WAS A MISTAKE. IT SHOULDN'T BE ON THERE.

MR. RUBY: IT IS MY UNDERSTANDING THAT A NUMBER OF THESE HAVE BEEN COMPLETELY SETTLED, AND SO IF MR. STONER WILL CONFIRM MY UNDERSTANDING, WOULD THIS BE AN APPROPRIATE TIME SO THAT AS TO THOSE CASES THAT IS JUST IDENTIFIED WE CAN GO THROUGH THEM ONE-BY-ONE, IDENTIFY THOSE THAT ARE SETTLED OFF CALENDAR BECAUSE THERE ARE NO REMAINING PARTIES WHO ARE UNSETTLED IN MY UNDERSTANDING IN CERTAIN OF THOSE CASES.

THE COURT: NUMBER 25, BURNING TREE?

MR. RUBY: START WITH 24, BURNING TREE. THAT IS SETTLED.

MR. STONER: AND MARTIN SHANDRASHAKAR.

MR. RUBY: AND MARTIN SHANDRASHAKAR.

MR. STONER: WELL, THEN THERE'S THE CROSS-COMPLAINTS.

MR. RUBY: I'M SORRY, YOUR HONOR. MAYBE MR. STONER AND I CAN—

THE COURT: WILL WE FIND A CASE THIS MORNING THAT WE CAN STOP ON, THAT WE CAN DO SOMETHING ON?

ALL RIGHT. WELL, LET ME ASK YOU, THOUGH, MR. STONER, YOU SAY YOU ARE NOT READY. I THINK I JUST HEARD YOU SAY THAT SECURITY PACIFIC VS. BURNING TREE HAS SETTLED, BUT THERE IS A CROSS-COMPLAINT IN THAT CASE?

MR. STONER: YES, THERE IS.

THE COURT: IT IS NOT SETTLED?

MR. STONER: NOT TO MY KNOWLEDGE.

MR. RUBY: THAT IS MR. ANDERSON'S CASE, AND MR. TRUSSELL CAN SPEAK TO THAT.

MR. TRUSSELL: YOUR HONOR, WE REPRESENT DR. SHANDRASHAKAR. IT IS MY UNDERSTANDING THAT HE HAS SETTLED WITH SECURITY PACIFIC.

THE COURT: HE IS NOT GOING TO SUE THESE OTHER DEFENDANTS, THEN, IF HE IS PART OF THIS NEGOTIATED RESOLUTION; IS HE?

MR. TRUSSELL: THAT'S CORRECT, YOUR HONOR. AS TO THE CROSS-COMPLAINT IT MAY BE THAT SUCH IS FILED ON BEHALF OF THE PARTNERSHIP SOMETIME AGO THROUGH ANOTHER LAW FIRM.

THE COURT: I AM GOING TO SHOW THAT AS SETTLED.

MR. RUBY: NUMBER 25 IS SETTLED. THAT IS DRYSDALE. THAT IS SETTLED AS A CASE COULD GET BY OUR AGREEMENT WITH SECURITY PACIFIC.

MR. STONER: THAT'S RIGHT.

MR. RUBY: SO THAT CASE IS SETTLED.

THE COURT: VERY GOOD.

MR. RUBY: THESE ARE THE ONES I KNOW ABOUT. NUMBER 37, THAT IS DR. PFEFFERBAUM. THAT IS SETTLED. 38, THAT IS ROBERTS. THAT IS SETTLED. 39 IS. THAT IS SETTLED.

THE COURT: ALL RIGHT. 34, THAT IS YOUR ACTION AGAINST KOUNS?

MR. STONER: THAT'S CORRECT. THAT'S NOT BEEN SETTLED.

THE COURT: WHAT IS THE NATURE OF THAT ACTION?

MR. STONER: BREACH OF PROMISSORY NOTE.

THE COURT: HOW MUCH IS THE NOTE?

MR. STONER: I WILL GET THE COMPLAINT. $150,000, YOUR HONOR.

THE COURT: $150,000?

LET ME HEAR FROM THE ATTORNEY FOR MR. KOUNS.

MS. KOCH: JAN KOCH APPEARING FOR MR. KOUNS, YOUR HONOR. THIS CASE IS SIMILAR TO THE SECURITY PACIFIC NATIONAL VS. DOUGLAS MARSHALL CASE WHICH APPEARS AS NO. 37. IS IT 36? I'M SORRY.

THE COURT: COULD IT BE TRIED WITH THAT CASE?

MS. KOCH: I BELIEVE IT COULD, YOUR HONOR.

THE COURT: AND MARSHALL ALSO OWES SECURITY? THERE IS A CLAIM, OF COURSE, THAT HE OWES SECURITY PACIFIC SOME MONEY?

MS. KOCH: THAT'S RIGHT. IT IS A PROMISSORY NOTE FOR THE $100,000.

THE COURT: 100,000? THESE LOOK LIKE THEY COULD BE FILED TOGETHER.

MS. KOCH: YES, SIR.

THE COURT: I AM GOING TO SEND NO. 34, SECURITY PACIFIC NATIONAL BANK VS. KOUNS, AND NO. 36, SECURITY VS. MARSHALL TO JUDICIAL ARBITRATION.

ARE THERE ANY OTHER CASES? IN OTHER WORDS, MR. STONER, DO YOU HAVE NO CASES AGAINST OTHER INSIDERS? NOT INSIDERS, I JUST MISSPOKE MYSELF. I DIDN'T MEAN TO SAY THAT KOUNS AND MARSHALL WERE INSIDERS. FORGIVE ME.

MS. KOCH: HOW ABOUT NO. 40 IS A BREACH OF A PROMISSORY NOTE AGAINST MR. RAY WAHBA?

THE COURT: MR. MOODY?

MR. MOODY: YES, YOUR HONOR, IT IS.

THE COURT: ALL RIGHT. THAT IS GOING TO GO TO JUDICIAL ARBITRATION.

MR. MC CABE: EXCUSE ME, YOUR HONOR?

THE COURT: YES.

MR. MC CABE: ON OUR NEXT WEEK'S STATUS CONFERENCE, THERE IS ALSO A SECURITY PACIFIC VS. PAUL WEHNER, AND IT FITS THE DESCRIPTION.

THE COURT: SO WE SHOULD SEND THAT ONE OUT AS WELL?

MR. MC CABE: IF THAT IS YOUR PATTERN, THIS ONE WOULD FIT IN AS WELL.

THE COURT: WHAT I WANT TO DO IN THESE NOTE CASES I FULLY INTEND TO SEND THEM TO THE SAME ARBITRATOR.

MR. MC CABE: THIS IS ALSO A NOTE CASE, YOUR HONOR. THE CLAIM IS MONEY OWED ON A PROMISSORY NOTE.

MR. STONER: THEY ARE NOTE CASES, ALL THREE STATUS CONFERENCES AGAINST VARIOUS INSIDERS OR OUTSIDERS.

THE COURT: MR. WEHNER'S CASE ON NEXT WEEK'S CALENDAR, JOHN, DO YOU THINK WE CAN RUN THAT DOWN? CAN YOU JUST MAKE A NOTE THAT THE SECURITY PACIFIC VS. WEHNER CASE ON NEXT WEEK'S CALENDAR IS ALSO REFERRED TO JUDICIAL ARBITRATION AS A GROUP WITH THESE CASES THAT WE JUST SENT OUT? THANK YOU.

MS. KOCH: YOUR HONOR, I'D JUST LIKE TO MAKE CLEAR FOR THE RECORD, ALTHOUGH THE COMPLAINT IN THESE MATTERS APPEAR TO BE STRAIGHT CLAIMS ON PROMISSORY NOTE, THE CROSS-COMPLAINTS WHICH I ANTICIPATE WILL BE FILED WILL INVOLVE AFFIRMATIVE DEFENSES AND A PANOPLY OF TECHNICAL EQUITY ISSUES.

THE COURT: WE JUST HAVE TO KEEP DISPOSING OF THEM ONE AT A TIME; DON'T WE?

MS. KOCH: YES.

THE COURT: NUMBER 35, MR. STONER, SECURITY PACIFIC VS. NIMROD, WHAT IS THE STATUS OF THAT CASE?

MR. STONER: I BELIEVE IT'S BEEN SERVED AND THERE HAS BEEN A CROSS-COMPLAINT FILED.

MR. RUBY: YOUR HONOR, IF THE COURT PLEASE, ALLEN RUBY, AND I'D LIKE THE COURT'S PERMISSION TO APPEAR SPECIALLY FOR DEFENSE COUNSEL, CROSS-COMPLAINANT'S COUNSEL WHO I BELIEVE IS MR. GARVIC. I THOUGHT HIS ASSOCIATE WOULD BE HERE TODAY BUT APPARENTLY SOMETHING GOT LOST IN THE SHUFFLE.

MS. CARATTO: I AM HERE.

MR. RUBY: YOU ARE? I ASK THAT I BE RELIEVED.

THE COURT: SO IS COUNSEL FOR NIMROD HERE?

MS. CARATTO: YES, YOUR HONOR. GOOD MORNING. I AM APPEARING ON BEHALF OF JOHN GARVIC. WE REPRESENT NIMROD AND I UNDERSTOOD—

THE COURT: WILL YOU SAY YOUR NAME?

MS. CARATTO: CARLA CARATTO, AND I UNDERSTOOD THAT OUR CASE IS BEING DISMISSED AS PART OF THE SETTLEMENT. MR. GARVIC TALKED TO ME YESTERDAY, INFORMED ME THAT MR. RUBY MIGHT HAVE MORE INFORMATION ON THAT. I WILL HAVE TO DEFER TO HIM.

MR. RUBY: I BELIEVE THIS IS ONE OF THE CASH FLOW LOAN CASES WHICH HAD BEEN SETTLED ALONG WITH THE OTHERS. I THINK THE COURT CAN SAFELY RECOGNIZE THIS AS SETTLED.

THE COURT: SETTLED.

I THINK THAT TAKES CARE OF ALL OF THE SECURITY PACIFIC CASES; AM I RIGHT?

MR. STONER: YES.

MR. JOHNSTON: YOUR HONOR, THERE IS ONE CASE LISTED, NO. 33.

THE CLERK: THIS IS A MISTAKE.

THE COURT: THAT IS A MISTAKE, JOHN TELLS ME. ALL RIGHT. VERY GOOD. LET'S GO TO NUMBER—

MR. RUBY: WILL THE COURT RECONSIDER CALLING NO. 1?

THE COURT: NUMBER 1?

MR. RUBY: THAT IS WEDBUSH, NOBLE, VS. BENJAMIN FOSTER. I WOULD LIKE TO—ALLEN RUBY APPEARING ESPECIALLY FOR MR. LEE SAVAGE WHO IS COUNSEL OF RECORD FOR MR. BEN FOSTER.

MS. MC COY: PATRICIA MC COY APPEARING FOR WEDBUSH, NOBLE COMPANY.

MR. RUBY: THIS IS ONE OF THESE VERY SIMILAR CASES. THERE HAS BEEN A SETTLEMENT PROPOSAL,

SERIOUS SETTLEMENT DISCUSSIONS. THERE IS SETTLEMENT PROPOSAL ON THE TABLE NOW WHICH I THINK IS GOING TO BE ACCEPTED. IF IT IS, I THINK THIS CASE WILL BE SETTLED ON THE SAME BASIS. MAY I RESPECTFULLY REQUEST THAT THE STATUS CONFERENCE IN THIS CASE BE CONTINUED FOR SOME REASONABLE PERIOD OF TIME AT WHICH THE CASE WE ALL HOPE TO BE SETTLED?

THE COURT: TWO WEEKS?

WE WILL PUT IT OVER TO THE 27TH.

NOW, MR. TOOTHMAN, NO. 31?

MR. TOOTHMAN: GOOD MORNING. JIM TOOTHMAN APPEARING ON BEHALF OF THE SAN JOSE EAR, NOSE & THROAT, DR. ALVIN NICKEL, AND ALSO ON NO. 32, CHOYCE VS. KMG.

IN BOTH THESE CASES ALL THE DEFENDANTS HAVE BEEN SERVED. THERE HAS BEEN A DEMURRER FILED. WE ALSO WILL BE ASKING THE COURT TO CONSIDER AN ADD-ON PETITION. WE FILED 20 OTHER ACTIONS RECENTLY AND ALL SIMILAR TO THE EXISTING LAW SUITS.

THE COURT: ARE YOU READY TO GO TO TRIAL?

MR. TOOTHMAN: MAYBE IN 90 DAYS. WE HAVE SOME DISCOVERY. WE ARE ENGAGED IN SETTLEMENT DISCUSSIONS RIGHT NOW IN THOSE CASES THAT ARE BEFORE THE COURT ON 31 AND 32.

WE HAVE ONE SMALL SETTLEMENT WITH THE DEFENDANT LAWYERS, KOUNS, MARSHALL.

AS TO THE OTHER INSTITUTIONAL DEFENDANTS THERE ARE SETTLEMENT DISCUSSIONS THAT HAVE JUST BEGUN.

MR. COATS: YOUR HONOR, WILLIAM COATS OF GIBSON, DUNN & CRUTCHER FOR KMG.

FOR EXAMPLE, OUR ANSWER IS NOT DUE UNTIL TOMORROW. I DON'T KNOW THE STATUS OF THE SERVICE OF THE OTHER PARTIES.

YOUR HONOR, IF I MIGHT SUGGEST THAT BEFORE WE START SETTING FOR TRIAL THE MISCELLANEOUS, MISCELLANY OF CASES THAT INVOLVE ALL OF THE DEFENDANTS, THERE HAD BEEN SOME EFFORT, SOME SORT OF PROOF OF SETTLEMENT SPEARHEADED BY MR. MCMANIS. I WOULD RATHER IF AT ALL POSSIBLE, YOUR HONOR, TO TRY TO GIVE THAT AN OPPORTUNITY TO WORK BEFORE PLUNGING BACK INTO DISCOVERY, DOING DEPOSITIONS AND PREPARING FOR TRIAL AGAIN.

THE COURT: IT HAS A CERTAIN SALUTARY EFFECT ON SETTLEMENT.

MR. COATS: NOT IF WE HAVE TO START WORKING AGAIN. IT IS JUST GOING TO MEAN WE ARE NOT GOING TO DO ANYTHING OTHER THAN PREPARE FOR TRIAL. AGAIN, WE HAVE ALREADY SET THE GROUND RULES, AND IF SOMETHING CAN BE PUT TOGETHER I THINK IT WOULD BE IN EVERYBODY'S BENEFIT RATHER THAN SPEND, START TRYING THESE CASES SERIATIM.

THE COURT: TELL ME, HAVE YOU DEPOSED PLAINTIFFS?

MR. COATS: I DOUBT IT, YOUR HONOR. I DON'T THINK SO. I CAN'T TELL YOU EVERYBODY THAT WE DEPOSED ON THIS CASE EITHER SCREEN TRACK OR OTHER TRACK. I DON'T RECOGNIZE ANY OF THESE NAMES.

THE COURT: DO YOU HAVE THE SAME EXPERTS THAT YOU HAD IN THE OTHER CASE? I MEAN, IN THE FIRST CASE?

MR. COATS: WE HAVEN'T THOUGHT THAT FAR AHEAD. I ASSUME WE WILL HAVE AT LEAST, CERTAINLY, THE SAME ACCOUNTING EXPERTS. WE'D HAVE TO DO NEW DAMAGES STUDY, SO ALL THOSE KIND OF THINGS THAT HAVE YET TO BE DONE

WHICH WERE DONE, OF COURSE, IN THE OTHER CASE.

MR. TOOTHMAN: YOUR HONOR, IT WOULD BE CORRECT. ALL ANSWERS HAVE NOT BEEN. AT LEAST, THERE HAS BEEN ONE DEMURRER ACCORDING TO OUR OFFICE INFORMATION, THAT THERE WILL PROBABLY BE A FEW OTHER DEMURRERS FILED.

WE WOULD JUST LIKE TO SEE IN A NORMAL COURSE THE PROCESS MOVE FORWARD. I KNOW THE COURT IS RENTING THE ROOM AND WANTS TO CONTINUE TO USE IT, RENTING, AS I UNDERSTAND IT IN TALKING TO THIS COURTROOM SO THAT WE CAN EFFECTIVELY HAVE TRIALS THREE OR SIX MONTHS DOWN THE ROAD.

AS I UNDERSTAND IT, IN TALKING TO MR. MC MANIS, HE IS ENGAGED IN ACTIVE DISCUSSIONS WITH THE DEFENDANTS REGARDING THE ISSUE OF SETTLEMENT OR NEGOTIATION, AND WE WANT TO SEE THAT PROCESS MOVE FORWARD PROMPTLY, TOO.

MR. DICKEY: YOUR HONOR, JOHN DICKEY FOR SUTRO & COMPANY.

THE COURT: WERE YOU A NAMED DEFENDANT?

MR. DICKEY: WE ARE A NAMED DEFENDANT IN MR. TOOTHMAN'S TWO ACTIONS THAT ARE ON THE STATUS CONFERENCE LIST TODAY. I DON'T KNOW WHETHER HE HAS INCLUDED US IN AN ADDITIONAL ACTION HE JUST MENTIONED, BUT WE HAVE NOT BEEN FORMALLY SERVED YET. AND I CAN SAY THAT WE HAVE NOT DEPOSED ANY OF HIS CLIENTS YET. IN FACT, WE HAVE NOT PARTICIPATED IN THE DEPOSITIONS OF ANY OF THE MYRIAD OF INDIVIDUAL PLAINTIFFS. SO THERE IS JUST NO WAY THAT WE ARE GOING TO BE READY TO GO TO TRIAL ANYTIME SOON.

I THINK IT IS LIKELY THAT WE WOULD NOT EVEN BE GETTING A HEARING ON DEMURRERS IN THIS CASE UNTIL MID- TO LATE SEPTEMBER. SO WE HAVE A LONG WAYS TO GO AS FAR AS MY CLIENTS ARE CONCERNED.

MS. SAWYER: YOUR HONOR, KIMBERLY SAWYER FOR THE SAME DEFENDANTS. WE HAVE JUST BEEN BROUGHT INTO THIS ENTIRE CASE IN APPROXIMATELY 500 COMPLAINTS. WE HAVE DONE NO DISCOVERY AND, OF COURSE, WE WOULD LOVE TO BE INVOLVED IN SETTLEMENT DISCUSSIONS, BUT WE ARE NOWHERE NEAR GOING TO TRIAL WITHIN THREE TO SIX MONTHS, EVEN.

THE COURT: MS. SAWYER, DOES YOUR CLIENT HAVE INSURANCE COVERAGE?

MS. SAWYER: WE ARE ATTEMPTING TO GET INSURANCE COVERAGE, YOUR HONOR. AT THIS POINT WE DO NOT HAVE IT.

THE COURT: YOUR FIRM REPRESENTS SPEER INDIVIDUALLY?

MS. SAWYER: SPEER, JAMES BROOKS, CONTINENTAL PARAGON AND SPEER DEVELOPMENT COMPANY.

MR. ROTHSCHILD: YOUR HONOR, STEVE ROTHSCHILD FOR JEFF REED. WE ARE IN A SIMILAR SITUATION. WE HAVE ONLY JUST RECENTLY GOTTEN INTO THE CASE, HAVE ANSWERS OF ABOUT 500 COMPLAINTS ALSO TODAY, I BELIEVE.

THE COURT: WHO IS YOUR CLIENT?

MR. ROTHSCILD: JEFF REED, WHO IS ONE OF THE VICE-PRESIDENTS OF TECHNICAL EQUITIES.

THE COURT: JEFF REED?

MR. ROTHSCHILD: YES. HE WAS SERVED.

THE COURT: PLAINTIFFS LOOK AT ME VERY SERIOUSLY WHEN I SAY JEFF REED. TELL ME WHO HE IS?

MR. ROTHSCHILD: HE WAS ONE OF THE VICE-PRESIDENTS OF THE TECHNICAL EQUITIES. WE HAVE JUST GOTTEN IN THE CASE SO I CAN'T TELL YOU MUCH MORE RIGHT NOW. BUT WE ALSO HAVEN'T HAD A CHANCE TO INITIATE DISCOVERY. SO I THINK IT WOULD BE A WHILE ALSO UNTIL WE ARE READY TO PROCEED TO TRIAL.

THE COURT: SO YOU NAMED JEFF REED, MR. TOOTHMAN?

MR. TOOTHMAN: I AM NOT SURE, YOUR HONOR. I BELIEVE WE HAVE.

MR. COATS: WE HAVE BEEN SERVED.

THE COURT: SO THE CASE IS NOT AT ISSUE; IS THAT RIGHT?

MR. TOOTHMAN: THAT'S RIGHT, YOUR HONOR.

THE COURT: YOU THINK YOU CAN GO TO TRIAL IN 90 DAYS, MR. TOOTHMAN? HOW LONG DID IT TAKE US TO GET THE MAIN CASE TO ISSUE?

MR. COTCHETT: NINE MONTHS, ELEVEN MONTHS.

THE COURT: IT IS NOT EASY WITH THESE PEOPLE, YOU SEE, TO GET THINGS TO ISSUE BECAUSE THEY ARE CRITICAL PLEADINGS.

MR. TOOTHMAN: I HEARD THEY ARE VERY COOPERATIVE, YOUR HONOR.

THE COURT: GOOD. ALL RIGHT. WELL, I AM GOING TO SET THIS FOR STATUS. PICK A DATE IN MARCH OF 1989?

THE CLERK: THAT WILL BE ON WEDNESDAYS? MARCH 8TH?

THE COURT: MAKE IT APRIL.

THE CLERK: APRIL 12TH?

THE COURT: APRIL 12TH, 1989 FOR STATUS.

THE CLERK: IN BOTH THESE CASES?

THE COURT: YES.

MR. DICKEY: YOUR HONOR, JOHN DICKEY FOR SUTRO. I JUST WANT TO POINT OUT FEDERAL COURT JUDGE INGRAM HAS SET THE CLASS ACTION FOR TRIAL COMMENCING THAT WEEK. SO WE MAY HAVE SOME PROBLEMS ALL ASSEMBLING. I JUST WANTED TO POINT THAT OUT.

THE COURT: DO YOU THINK IT SHOULD BE BEFORE THEN? DO YOU WANT TO BACK IT UP A FEW DAYS?

MR. DICKEY: MAYBE A WEEK.

THE COURT: APRIL 5TH. MR. TOOTHMAN, HAVE YOU DESIGNATED YOUR EXPERTS?

MR. TOOTHMAN: NO, YOUR HONOR.

THE COURT: THAT IS A CONTROLLING POINT IN THESE CASES. YOU HAVE TO MOVE ON THAT AND GET THEM OUT THERE BECAUSE IT IS THAT PROCESS THAT REALLY THE COMPLETION OF WHICH PUTS YOU IN A POSITION TO TRY THE CASE. IF YOU HAVEN'T DONE THAT YOU ARE NOT GOING TO GET YOUR CASE READY FOR TRIAL. SO YOU SHOULD TAKE IT UPON YOURSELF TO DO THAT. AND IF YOU WANT TO, AFTER YOU HAVE DONE THAT, YOU CAN COME TO ME AND I WILL MAKE AN ORDER MAKING THEM TELL YOU WHO THEIR EXPERTS ARE.

MR. TOOTHMAN: FINE, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. TOOTHMAN: THANK YOU.

MR. ROTHSCHILD: YOUR HONOR, STEVE ROTHSCHILD AGAIN. I JUST WANT TO POINT OUT WE HAVE GOT THE SAME SITUATION IN ELEVEN OF THE OTHER CASES THAT ARE SET FOR STATUS CONFERENCE TODAY WHERE WE HAVE ONLY RECENTLY BEEN SERVED AND ARE JUST GETTING INTO THE CASE.

MR. COTCHETT: UNLESS THERE ARE ANY OTHER INDIVIDUAL CASES NOT IN T-E, I AM PREPARED TO

GO DOWN T-E AND TELL YOU THE STATUS OF OUR CASES, TEPLG.

MR. WALTER: EXCUSE ME, ONE. ALLAN WALTER AGAIN ON BEHALF OF STEPHEN RUSSO. I SHOULD HAVE MENTIONED IT IS VERY HARD FOR US TO TELL TODAY WHICH OF THESE CASES ARE ON BECAUSE SOME OF THE NAMES ARE DIFFERENT THAN ONE LETTER AND SOME OF THE CASE NUMBERS LISTED ON THE STATUS CONFERENCE SHEET ARE DIFFERENT FROM THE NUMBERS ON THE COMPLAINTS THAT WE HAVE BEEN SERVED WITH. SO IT IS HARD FOR ME TO TELL ON BEHALF OF MR. RUSSO WHICH OF THESE CASES WE ARE IN AND WHICH ARE NOT.

MR. COTCHETT: I THINK WE WILL BE ABLE TO TELL HIM THAT IN A MOMENT, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. GRANT: GOOD MORNING, YOUR HONOR. IRVEN GRANT FOR RICHARD DERBY, JR. WE ARE NO. 21 ON THE LIST. WE HAVE ALL DEFENDANTS SERVED I BELIEVE WITH THE EXCEPTION OF ONE, AND I EXPECT THAT SERVICE TO BE ACCEPTED BY COUNSEL.

WE HAVE LITTLE OR NO DISCOVERY, AND WE ARE JUST BEGINNING A SEARCH FOR EXPERTS.

THE COURT: WHAT IS THE NATURE OF YOUR CASE?

MR. GRANT: FRAUD, MISREPRESENTATION.

THE COURT: IS MR. DERBY AN INVESTOR?

MR. GRANT: YES, HE IS.

THE COURT: WHAT DID HE INVEST IN?

MR. GRANT: PRIMARILY NOTES.

THE COURT: AND HOW MUCH?

MR. GRANT: THE NOTES TOTAL APPROXIMATELY $650,000. THERE IS SOME STOCK AND A LIMITED AMOUNT OF DEBENTURES.

MR. COATS: YOUR HONOR, WILLIAM COATS OF GIBSON, DUNN & CRUTCHER. THIS IS ANOTHER CASE WHICH WE HAVE RECENTLY BEEN SERVED. WE HAVE NOT YET ANSWERED. I DON'T KNOW IF ANYONE HAS ANSWERED, ANOTHER CASE THAT THERE HAS BEEN NO DISCOVERY, SIMILAR TO TOOTHMAN CASES.

MR. GRANT: I BELIEVE I RECEIVED SOME ANSWERS YESTERDAY, IN A LARGE STACK YESTERDAY, YOUR HONOR. I CAN'T TELL THE COURT WHO ANSWERED, AND SO FORTH.

MR. ORTON: YOUR HONOR, GARY ORTON REPRESENTING WILLIAM SCHISANO AND ROBERT FOLEN.

COUNSEL HAS INDICATED ALL PARTIES HAVE BEEN SERVED. WE HAVE BEEN SERVED IN 14 OF THE CASES. ON THIS LIST WE HAVE NOT BEEN SERVED IN ITEM NO. 21.

MR. WALTER: ALLAN WALTER ON BEHALF OF STEPHEN J. RUSSO. THIS IS ONE OF THE CASES I WAS REFERRING TO. WE HAVE BEEN SERVED ON BEHALF OF RICHARD DERBY, SR., BUT NOT RICHARD DERBY, JR., AS FAR AS I KNOW.

MR. GRANT: SO FAR WE HAVEN'T NAMED THEM, YOUR HONOR.

THE COURT: I'M SORRY, I DIDN'T HEAR YOU. THE CLERK JUST TOLD ME THAT RICHARD DERBY, SR., IS A DIFFERENT CASE.

MR. RUBY: THERE ARE TWO DR. DERBYS. THEY ARE TOTALLY DIFFERENT.

THE COURT: THEY ARE DIFFERENT PEOPLE?

MR. RUBY: THEY ARE FATHER AND SON, BUT THE CASES ARE APART, FAR APART.

MR. GRANT: WE REPRESENT JUNIOR. SENIOR IS REPRESENTED BY SEPARATE COUNSEL, SEPARATE CASES.

MR. KENT: YOUR HONOR, MARC I. KENT ON BEHALF OF JAMES LYNN MC NEIL. MR. MC NEIL WAS AN ASSISTANT VICE-PRESIDENT OF TECHNICAL EQUITIES.

THE COURT: OF COURSE, I KNOW WHO MR. MC NEIL IS. I KNOW ABOUT YOU BECAUSE WE HAVE SEEN EACH OTHER.

MR. KENT: WE HAVE ALSO BEEN RECENTLY BROUGHT INTO THIS ACTION. WE HAVE NOT HAD AN OPPORTUNITY TO EVALUATE THE DISCOVERY OR CONDUCT DISCOVERY.

MR. GRANT: WE ARE PART OF THE DISCOVERY THAT IS BEING PUT TOGETHER BY MR. MC MANIS. WE WOULD LIKE THAT TO TAKE ITS COURSE, AT LEAST, BE GIVEN A CHANCE.

THE COURT: SO WHEN DO YOU THINK YOU WILL BE READY TO GO TO TRIAL?

MR. GRANT: NINE MONTHS.

THE COURT: TWO YEARS? NO EXPERTS YET?

MR. GRANT: NONE SIGNED UP.

THE COURT: THEY ARE EXPENSIVE, THESE EXPERTS.

MR. GRANT: THEY ARE ALSO HARD TO FIND.

THE COURT: WELL, LET'S SET THIS CASE FOR STATUS ON THAT APRIL DATE THAT WE SET MR. TOOTHMAN'S CASE.

THE CLERK: APRIL 5TH?

THE COURT: APRIL 5TH. ALL RIGHT.

MR. GRANT: THANK YOU, YOUR HONOR.

MR. MAC SWAIN: YOUR HONOR, ITEM NO. 12. MY NAME IS GREGORY MAC SWAIN. I AM ESPECIALLY APPEARING FOR CHARLES B. GREENE. THIS IS A $12,000 PROMISSORY NOTE. WE HAVE ONE DEFENDANT, HARRY STERN, AND MR. GREENE HAS INFORMED ME HE IS READY TO GO TO TRIAL.

THE COURT: I AM GOING TO SEND YOU TO ARBITRATION. WE WILL SEE IF THERE IS A REJECTION.

MR. MAC SWAIN: THANK YOU, YOUR HONOR.

MS. SAWYER: YOUR HONOR, THAT WAS ITEM 12? I BELIEVE MY CLIENTS HAVE ALSO BEEN SERVED IN THIS CASE, AND IT IS THE SAME FACT SITUATION AS IN ALL OTHERS. OUR ANSWER, I BELIEVE, IS DUE JULY 15TH, APPROXIMATELY JULY 15TH.

THE COURT: MR. MAC SWAIN, WILL YOU SEVER OUT ALL BUT HARRY STERN?

MR. MAC SWAIN: HARRY STERN IS THE ONLY DEFENDANT, YOUR HONOR. WE HAVE ONE DEFENDANT, HARRY STERN.

THE COURT: LET'S SEE IF WE CAN SETTLE THIS RIGHT NOW. MR. RASCH-CHABOT?

MR. RASCH-CHABOT: I DON'T HAVE 12,000 WITH ME, YOUR HONOR.

THE COURT: HOW ABOUT A STIPULATION?

MR. RASCH-CHABOT: WHAT DO YOU HAVE IN MIND?

THE COURT: THAT YOU STIPULATE TO JUDGMENT.

MR. RASCH-CHABOT: I AM HAPPY TO SAY I DON'T HAVE THAT KIND OF AUTHORITY RIGHT NOW. MAYBE WE CAN WORK IT OUT.

THE COURT: IF YOU CAN, RATHER THAN GETTING THE ARBITRATOR INVOLVED IN THIS, BUT THE ORDER IS TO ARBITRATION.

MR. MAC SWAIN: THANK YOU, YOUR HONOR.

MR. DICKEY: YOUR HONOR, JOHN DICKEY FOR SUTRO.

BEFORE MR. COTCHETT TALKS ABOUT HIS CASES, I WANTED TO TALK FOR A MOMENT ABOUT THE THREE CLASS ACTIONS THAT ARE ON FOR STATUS CONFERENCE.

THE COURT: I AM GOING TO ADDRESS THOSE THREE CASES SEPARATELY. I WANT TO GO THROUGH THESE OTHER CASES FIRST.

MR. DICKEY: ALL I WANTED TO SAY, THOSE CASES, AND THOSE PLAINTIFFS AND IDENTICAL CLAIMS ARE SET FOR TRIAL IN THE FEDERAL FORUM IN APRIL OF NEXT YEAR.

THE COURT: THAT MAKES SENSE AS A CLASS MATTER, BUT THEY ARE BEFORE ME, AND UNDER THE LAW I AM TO DISPOSE OF THEM AND I AM HERE TO FIND OUT WHY THESE CASES SHOULDN'T BE SENT OUT TO TRIAL.

MR. DICKEY: VERY WELL.

THE COURT: MR. COTCHETT?

MR. COTCHETT: YES, YOUR HONOR.

FIRST, YOU SIGNED AND FILED AN ORDER SAYING THAT ALL PARTIES MUST BE SERVED BY JUNE 10TH, 1988. ON BEHALF OF THE TEPLG WE COMPLIED WITH THAT ORDER. I ASSUME ALL THE DEFENDANTS WHO HAVEN'T BEEN SERVED KNOW WHAT REMEDY TO TAKE AT THIS POINT. AND I SAY THIS ONLY IN THE SENSE THAT WE CAN GET EVERYTHING INTO A BUNDLE AND MOVE THE BUNDLE DOWN THE STREET.

IN REGARD TO THE COTCHETT & ILLSTON CASES, NOS. 4, 5, 6, 8, 9, 11, 19 AND 20—MR. RUBY AND MR. TRUSSELL WILL SPEAK FOR THEIR CASES—BUT THEY HAVE SUED IN ADDITION AND SERVED IN ADDITION PURSUANT TO YOUR ORDER THE FOLLOWING PEOPLE: CONTINENTAL PARAGON, TIMOTHY SPEER, BRET SPEER, PATRICK SPEER, JAMES BROOKS, SPEER DEVELOPMENT, AND REAL ASSET MANAGEMENT COMPANY, JEFF REED, STEPHEN RUSSO, ROBERT FOLEN, WILLIAM SCHISANO, CONRAD BLACKERBY, CRAIG FOSTER, JOSEPH

BROOKS, MARIA GARZA, ELSIE STERN, AND SUTRO & COMPANY.

I CAN REPRESENT THAT ON BEHALF OF THE RUBY CLIENTS, THE ANDERSON CLIENTS, THOSE PEOPLE HAVE ALSO BEEN NAMED AND SERVED.

SO, NOW, BRINGING US TO THE PROCEDURAL POSTURE OF THE CASE, MOST PEOPLE ARE FILING ANSWERS BECAUSE MOST PEOPLE I BELIEVE RECOGNIZE THE WISDOM OF YOUR PRIOR RULINGS. AND SINCE THEY ARE BEING SERVED IN MOST INSTANCES AS DOE DEFENDANTS BEING BROUGHT IN, YOUR PRIOR RULING WOULD STAND AS TO THOSE CAUSES OF ACTION.

AS TO CONTINENTAL PARAGON WE HAVE NOT RECEIVED ANSWERS YET, BUT WE UNDERSTAND WE ARE RECEIVING ANSWERS. WE UNDERSTAND WE ARE RECEIVING ANSWERS FROM ALL PARTIES.

AGAIN, HAVING SPENT NINE MONTHS TO ELEVEN MONTHS IN THE DEMURRER STAGE, THE CAUSES OF ACTION ARE REALLY ALL PUT TO BED. WE ANTICIPATE THE ANSWERS. THE LAST ONES I BELIEVE ARE DUE MONDAY. WE ANTICIPATE THAT ALL ANSWERS WILL BE IN ON SOME 562 CASES BY THEN. IN SOME INSTANCES WE HAVE GIVEN SOME SHORT EXTENSIONS OF TIME BECAUSE OF MECHANICAL DIFFICULTIES AND AN OFFICE OR WHAT HAVE YOU, BUT I THINK IT IS FAIR TO SAY THAT WITHIN 30 DAYS 562 COMPLAINTS WILL BE AT ISSUE AS TO THESE NEW PARTIES, AND I WILL COME BACK AND TALK ABOUT THE OLD PARTIES IN A MOMENT.

I BELIEVE OUR ROUGH CALCULATIONS ARE THAT THOSE REPRESENT 97 PERCENT OF ALL CASES ON FILE, EXCLUDING, OF COURSE, THE CASES I JUST HEARD MR. TOOTHMAN IS GOING TO FILE. HE HAS SOME 20 MORE TO ADD TO THAT.

GIVEN THOSE ROUND FIGURES, WITHIN 30 DAYS THE GREAT MAJORITY OF THIS WILL BE AT ISSUE AGAINST THE PEOPLE I JUST MENTIONED.

AS YOU KNOW, WE HAVE NOW PUT TO BED A NUMBER OF PEOPLE, AND WE ARE ENTERING INTO DISCUSSIONS WITH SOME ADDITIONAL PEOPLE WHO HAVE NOW COME TO US IN THIS NEW GROUP AND WOULD LIKE TO ENTER INTO WHAT I CALL A WEHNER OR DE LA OSSA ARRANGEMENT. WITHOUT BELABORING THAT, THAT WOULD ELIMINATE THAT CASE.

I WOULD VENTURE TO SAY THAT WE WILL BE PREPARED TO FILE AT-ISSUE MEMORANDUMS WITHIN 30 DAYS. WE WILL BE PREPARED TO GO TO TRIAL AGAINST THESE ADDITIONAL PEOPLE AS QUICKLY AS THE COURT CAN GET US A TRIAL DATE, BUT WE PLAN—

THE COURT: HOW LONG WILL IT TAKE? HOW LONG WILL THE TRIAL TAKE?

MR. COTCHETT: TO TRY THESE ADDITIONAL CASES, FOUR WEEKS.

MR. DICKEY: YOUR HONOR, MAY I INTERJECT?

MR. COTCHETT: IF I CAN FINISH IN ONE SECOND? SUTRO IS THE ODD BALL OUT IN THAT THEY WILL PROBABLY BE FILING A DEMURRER AND WE WILL GO THROUGH THE DEMURRER BATTLE WITH THEM WE ANTICIPATE AND OBVIOUSLY, EVENTUALLY DOWNSTREAM WE WILL LEARN HOW TO PLEAD SOMETHING AGAINST THEM FOR LACK OF A BETTER WORD. I SAY THAT VERY ROUGHLY IN THE SENSE THAT I THINK WE HAVE CRAFTED A COMPLAINT AND THEY WILL BE JOINING WITH US IN THE TRIAL.

THE COURT: WELL, I OVERRULED THEIR DEMURRER IN MR. GOLD'S CASE SO, I MEAN, YOU KNOW WHAT—

MR. DICKEY: YOUR HONOR, YOU DID SUSTAIN OUR DEMURRER WITH RESPECT TO A NUMBER OF THEORIES, INCLUDING BREACH OF FIDUCIARY DUTY. THAT IS ONE OF THE CAUSES OF ACTION THAT MR. COTCHETT HAS BROUGHT AGAINST MY CLIENT. SO WE ARE GOING TO RENEW THAT DEMURRER.

THE COURT: MR. DICKEY, I HAVE HEARD ALL THIS EVIDENCE NOW. I AM NOT SAYING WHAT WE WILL DO WITH YOUR DEMURRER, BUT HAVING GONE THROUGH ONE TRIAL AND NOW ALMOST THROUGH ANOTHER, I DO HAVE SOME ACQUAINTANCE WITH THE FACTS OF THE CASE.

MR. DICKEY: I DON'T DOUBT THAT YOU DO. IT IS A QUESTION OF LAW WE PUT TO YOUR HONOR.

MR. COTCHETT: MR. DICKEY IS RIGHT. HE WILL GO FILE A DEMURRER. I AM SURE AS TO A PORTION OF IT HE IS CORRECT. FOR EXAMPLE, THE FIDUCIARY RELATIONSHIP, HE IS CORRECT. MY SIMPLE POINT IS I DIDN'T MEAN TO BE QUICK-TONGUED, BUT I THINK SOMEHOW, SOME WAY, SOMETHING WILL BE ON A PIECE OF PAPER THAT WILL BRING MR. DICKEY'S CLIENT TO THE COURTROOM.

BE THAT AS IT MAY, WITHIN 30 DAYS WE WILL BE FILING AN AT-ISSUE MEMORANDUM. WE WILL BE ASKING TO SEVER OUT FIVE OR SIX 70-YEAR-OLDS AND/OR MAYBE ONLY ONE JUST SO WE CAN MOVE THE BALL GAME AHEAD.

THE COURT: COULD I ASK YOU, COULD YOU TRY ALL 500 PLAINTIFFS IN ONE CASE?

MR. COTCHETT: THAT WOULD TURN IT INTO A ONE-YEAR TRIAL. LET ME SAY THAT WE ARE BRINGING A MOTION VERY SHORTLY FOR COLLATERAL ESTOPPEL AGAINST CERTAIN INDIVIDUALS.

WE ARE NOW IN THE THROES OF DISCUSSING WITH THEM CERTAIN PROCEDURAL MATTERS THAT

JUST FINISHED AS A RESULT OF THE TRIAL WE JUST COMPLETED.

AS YOU KNOW, COLLATERAL ESTOPPEL MOTION MUST HAVE A FINAL JUDGMENT OF DETERMINATION. WE ARE IN THE THROES OF PUTTING THAT TOGETHER. WE BELIEVE THE QUICKEST WAY TO GO IS TO TRY ONE OF TWO PLAINTIFFS, DO IT ROUGHLY THE WAY WE TRIED IT BEFORE, BUT IT WILL BE A LOT SHORTER TRIAL BECAUSE AT THIS POINT WE CAN HONE IN, FOR EXAMPLE, JUST QUICKLY POINT OUT TO THE COURT THE FIRST SEVEN PEOPLE I LISTED, CONTINENTAL PARAGON THROUGH REAL ASSET MANAGEMENT. WE KNOW WHAT PACKAGE OF EVIDENCE THAT WILL GO AGAINST THOSE INDIVIDUALS.

AS TO THE REMAINING INDIVIDUALS, WE KNOW WHAT PACKAGE WILL GO. IT WILL GO IN A LOT QUICKER. SO WE ARE TALKING ABOUT A FOUR-WEEK TRIAL.

I ANTICIPATE, THOUGH, THAT ONCE THE MATTER GETS SET FOR TRIAL AFTER WE COME BACK TO YOU AND SET AN AT-ISSUE MEMO, MR. DICKEY HAS FILED HIS DEMURRER, AND WE ARE AT ISSUE, I ANTICIPATE AT THAT POINT WE WILL GO TO MR. MC MANIS WHO DID SUCH AN ABLE JOB BEFORE, AND HE WILL BE ABLE TO BRING US WITHIN SOME PARAMETERS.

FOR EXAMPLE, MR. BLACKERBY, MR. FOSTER, MR. BROOKS, MR. SCHISANO, PEOPLE LIKE THAT I BELIEVE WILL FIT INTO A WEHNER, DE LA OSSA SETTLEMENT. SO THOSE ARE THE NUMBERS I HAVE AND THOSE TAKE CARE OF THE COTCHETT & ILLSTON.

I WOULD ASK MR. RUBY OR MR. ANDERSON TO JUST GIVE THE NUMBERS OF THEIRS.

UNLESS THE COURT HAS ANY QUESTIONS, THAT IS WHERE WE ARE PROCEDURALLY. THE CASES ARE ALL MOVING ALONG. YOUR ORDER HAS BEEN FOLLOWED ABOUT SERVICE, AND EVERYBODY IS IN STEP.

THE COURT: WILL YOU BE USING THE SAME EXPERTS?

MR. COTCHETT: YES, YOUR HONOR.

THE COURT: FEAKINS AND DROTT?

MR. COTCHETT: AND OTHERS THAT WE HAVE PREVIOUSLY IDENTIFIED.

MR. DICKEY: YOUR HONOR, AT THE RISK OF REPEATING MYSELF, IT IS STILL THE CASE THAT MY CLIENT HAS NOT PARTICIPATED IN ANY OF THE DISCOVERY IN THE INDIVIDUAL ACTIONS INVOLVING MR. COTCHETT, MR. RUBY, MR. ANDERSON'S CLIENTS.

IF WE ARE GOING TO HAVE TO DO SOME SUBSTANTIAL DISCOVERY BEFORE WE ARE READY TO GO TO TRIAL, WE HAVEN'T DEPOSED THOSE PEOPLE. I DON'T KNOW WHO AMONG THOSE PEOPLE WOULD BE SET FOR TRIAL, BUT SUFFICE IT TO SAY WE ARE GOING TO HAVE TO DO SOME DISCOVERY.

WE HAVE BEEN OUT OF THESE CASES FOR THE PAST TWO YEARS. WE WERE JUST BROUGHT IN TWO MONTHS AGO. WE ARE NOT READY TO GO TO TRIAL.

THE COURT: WELL, YOU SEE, I HAVE THIS BIG COURTROOM HERE, AND WE HAVE GOT TO MAKE SOME USE OF IT. SO WE ARE GOING TO SET SOME CASES TODAY.

MR. COTCHETT: MORE IMPORTANT IS THE STATUTE. I UNDERSTAND MR. DICKEY'S PLIGHT, BUT THERE IS A STATUTE THAT PROVIDES THAT ONE OR MORE OF OUR ELDERLY CLIENTS ARE ENTITLED TO TRIAL.

THE COURT: MR. DICKEY, CAN YOU BE READY TO GO, SAY, OCTOBER 1ST?

MR. DICKEY: NO, NO EVEN CONCEIVABLE. WE ARE NOT GOING TO BE EVEN AT ISSUE, I DON'T BELIEVE, BY OCTOBER 1.

THE COURT: WELL, I CAN FIX THAT BECAUSE I WILL SIMPLY SHORTEN UP THE TIME ON ALL THE PLEADING ISSUES SO THAT WE HEAR THEM ON VERY SHORT NOTICE. BUT, I MEAN, IT IS OF CONCERN TO ME. I AM SUPPOSED TO EXPEDITE THESE CASES, AND YOU ARE THE ONE REMAINING INSTITUTIONAL DEFENDANT, NOT COUNTING SPEER, OF COURSE, AND YOU HAVE BEEN VERY ATTENTIVE TO THESE PROCEEDINGS, MR. DICKEY. I TRUST THAT YOU KNOW A GREAT DEAL ABOUT THIS CASE.

MR. DICKEY: I HAVE BEEN ATTENTIVE AT LEAST TO MR. PLUTZIK'S CASE, AND WE HAVE ADMITTEDLY BEEN VERY MUCH INVOLVED IN THAT. BUT THE FACT OF THE MATTER IS WE MADE CONSCIOUS DECISIONS NOT TO PARTICIPATE IN THESE HUNDREDS AND HUNDREDS OF DEPOSITIONS OF THE INDIVIDUAL PLAINTIFFS BECAUSE MR. COTCHETT DIDN'T SUE US.

WE HAVE SOME REAL PROBLEMS WITH THAT, AND I UNDERSTAND THAT THE COURT WANTS TO UTILIZE THE SPACE.

MY SUGGESTION WOULD BE, IF THAT IS THE CRITICAL OVER-RIDING PRACTICAL PROBLEM, IS THAT MY CLIENT BE SEVERED OUT AT THE INITIAL TRIALS BECAUSE WE ARE JUST SIMPLY NOT GOING TO BE PREPARED TO COMPLETE DISCOVERY IN THIS CASE. WE HAVEN'T EVEN NAMED EXPERTS, SO WE WILL BE IN THE PROCESS OF DOING THAT, BUT I HONESTLY DO NOT BELIEVE WE ARE GOING TO BE AT ISSUE BY OCTOBER 1.

WE ARE PLANNING TO HAVE CROSS-COMPLAINT INTERACTION. I CAN'T TELL YOU WHO THOSE CROSS-DEFENDANTS ARE GOING TO BE AT THIS POINT, BUT THAT IS GOING TO TAKE SOME TIME TO BRING THOSE PEOPLE IN.

THE COURT: CAN YOU NAME YOUR EXPERTS?

MR. COTCHETT: SURELY. THEY ARE ALL NAMED. THEY HAVE BEEN NAMED SINCE JANUARY 4TH, THE DATE THAT YOUR ORDER PROVIDED WE NAME THEM. I THINK THIS WILL ALL BE DEALT WITH PROCEDURALLY.

I UNDERSTAND MR. DICKEY'S PROBLEM.

THE COURT: WELL—

MR. COTCHETT: WE WILL MARCH DOWN THE ROAD, FILE APPROPRIATE PAPERS. WE WILL BE AT ISSUE IN TIME TO COMPLY WITH THE LEGISLATURE'S WISDOM ABOUT GIVING OLDER PEOPLE THEIR DAY IN COURT.

THE COURT: WELL, I AM GOING TO SET THIS CASE THAT YOU JUST IDENTIFIED OCTOBER 1ST.

MR. DICKEY: WHICH CASE IS THAT, YOUR HONOR?

THE COURT: THE CASES, THESE 500-SOME-ODD CASES THAT HAVE JUST BEEN ENUMERATED TO ME AS AGAINST SPEER AND BROOKS AND REED AND SCHISANO, FOLEN AND BLACKERBY.

MR. WALTER: YOUR HONOR, ALLAN WALTER ON BEHALF OF STEPHEN RUSSO.

HE IS AN INDIVIDUAL DEFENDANT, BUT HE IS IN A FAR WORSE POSITION THAN SUTRO & COMPANY. HE HAS JUST BEEN SERVED. WE DO INTEND TO DEMUR BECAUSE ALL OF 477 COMPLAINTS WE HAVE BEEN SERVED WITH THREE WEEKS AGO INCLUDE FRAUD AND BREACH OF FIDUCIARY DUTY, AND WE DO BELIEVE A DEMURRER WILL LIE TO AT LEAST THOSE TWO CAUSES OF ACTION.

THE COURT: ALL RIGHT.

MS. SAWYER: YOUR HONOR, I HATE TO REPEAT WHAT EVERYONE ELSE HAS SAID.

I FEEL WE ARE IN THE SAME POSITION. WE HAVE JUST BEEN SERVED WITH THESE COMPLAINTS, AND WE HAVE HAD NO CONTACT WITH THIS CASE WHATSOEVER, AND I DON'T FEEL THAT WE CAN BE READY TO GO TO TRIAL BY OCTOBER 1ST.

I GUESS WE WILL HAVE TO FILE MOTIONS TO SEVER, BUT ARE YOU SPEAKING TO US?

THE COURT: YES, I AM.

MS. SAWYER: GOING TO TRIAL ON THAT DATE?

THE COURT: THERE IS A COURT MANAGEMENT ORDER IN THE FIRST CASE. YOU ARE ALL DIRECTED AS OFFICERS OF THE COURT TO OBTAIN A COPY OF THAT, READ IT AND UNDERSTAND IT. YOU ARE DIRECTED TO REVIEW EACH AND EVERY PIECE OF EVIDENCE THAT WAS ADMITTED IN THE FIRST CASE FOR THE PURPOSES OF DETERMINING WHETHER YOU CAN STIPULATE THAT IT BE ADMITTED IN THE CASE COMING UP. YOU ARE TO NAME EXPERTS FORTHWITH.

LASTLY, THERE WAS A DAILY IN THAT CASE. IT IS AN EXCELLENT INVESTMENT FOR YOU ON BEHALF OF SPEER TECH TO OBTAIN A COPY OF THAT AND LEAF THROUGH IT. YOU MIGHT LOOK AT THE TESTIMONY OF MR. FEAKINS AND MR. DROTT. YOU HAVE DONE THAT, MR. DICKEY, HAVE YOU NOT?

MR. DICKEY: YOUR HONOR, THE ANSWER IS UNFORTUNATELY, NO.

THE COURT: YOU HAVE NOT?

MR. DICKEY: NO.

THE COURT: ALL RIGHT.

MR. RUBY: YOUR HONOR, EXCUSE ME, I DIDN'T MEAN TO INTERRUPT.

THE COURT: GO AHEAD.

MR. RUBY: THE COURT MADE AN ORDER, I THINK, IN DECEMBER OF 1986 REQUIRING ALL DEFENDANTS TO DISCLOSE, PROVIDE TO THE PLAINTIFFS COPIES OF INSURANCE POLICIES, AND I WOULD RESPECTFULLY REQUEST THAT THE SAME ORDER BE MADE TODAY PROVIDING THAT ALL DEFENDANTS WHO ARE MAKING, WHO ARE APPEARING ON THE STATUS CONFERENCE, WHO HAVE NOT ALREADY DONE SO PROVIDE FOR ADMINISTRATIVE CONVENIENCE. MR. COTCHETT, WILL YOU BE THE RECEIVER OF THIS? THAT ALL DEFENDANTS WHO HAVE NOT YET DONE SO PROVIDE COPIES OF ALL INSURANCE POLICIES TO WHICH THEY HAVE TENDERED A DEFENSE OR WHICH IN ANY WAY, SHAPE OR FORM MIGHT PROBABLY PROVIDE EITHER A DEFENSE OR COVERAGE.

MAY THAT PLEASE BE DONE WITHIN SEVEN DAYS?

MR. COTCHETT: SO THAT THERE IS NO CONFUSION TO THAT, I THINK THAT IS AN EXCELLENT IDEA, THAT IT IS FAIR.

THE COURT: THERE IS AN ORDER.

MR. COTCHETT: THERE IS. IT IS FAIR TO THESE PEOPLE THAT HAVE JUST BEEN SERVED, OUR OFFICE WILL UNDERTAKE TO MAIL YOUR PRETRIAL ORDERS WITH THE PROOF OF SERVICE IN MAILING TO EACH ONE OF THESE PEOPLE SO THEY HAVE A PRETRIAL ORDER INCLUDING YOUR CASE MANAGEMENT ORDER AND WHAT HAVE YOU. WE WILL MAIL IT OUT TOMORROW IF THAT IS OKAY.

THE COURT: ALL RIGHT.

MR. COTCHETT: ON THE ISSUE THAT MR. RUBY JUST RAISED, THAT WOULD HELP I THINK MR. MC MANIS AND JUDGE PHELPS GREATLY IF WITHIN SEVEN DAYS, WHICH IS NOT A HARD THING TO DO, BECAUSE I THINK ALL OF THESE PEOPLE KNOW WITHIN SEVEN DAYS, THEY SUPPLY US WITH THE

INFORMATION CALLED FOR, THE INSURANCE COVERAGE.

THE COURT: I WILL JUST SAY THIS, COUNSEL PROBABLY ALREADY KNOWS THIS, BUT IF YOU CONTACT THE AGENT FOR YOUR CLIENT, THE AGENTS TYPICALLY MAINTAIN A COMPUTERIZED LISTING OF ALL POLICIES OF ANY KIND THAT HAVE BEEN ISSUED TO YOUR CLIENT ON ALL OF THE SEPARATE JOBS. I MEAN, SPEER DEVELOPMENT PROBABLY HAS SEPARATE POLICIES WITH RESPECT TO DEVELOPMENTS, BUT THAT COMPUTER READOUT SHOULD BE FURNISHED.

I ASSUME EVERYBODY KNOWS ALL THAT, AND I AM JUST WASTING MY TIME IN SAYING IT. THAT IS A VERY QUICK WAY TO DO IT.

MR. COTCHETT: THANK YOU, YOUR HONOR.

MR. IRVINE: PERRY IRVINE FOR ALBERT J. GREEN. MR. GREEN IS SUCH. IN THIS CASE MR. COTCHETT DIDN'T BOTHER TO NAME HIM. HE JUST RECENTLY NAMED HIM AND BEING THE PAWN THAT HE IS IN THIS SCENARIO HE WASN'T NAMED ORIGINALLY BECAUSE THERE WAS OBVIOUSLY NO REASON TO NAME HIM.

MR. COTCHETT: EXCUSE ME, HE WAS NAMED.

MR. IRVINE: HE WAS NAMED, OH, YES. HE WAS NAMED RECENTLY, BUT ORIGINALLY HE WASN'T NAMED. HE WAS NAMED IN THREE APPARENT CASES FILED BY OUT-OF-TOWN COUNSEL AND, NOW, YOU ARE TALKING ABOUT SETTING THIS CASE FOR TRIAL ON OCTOBER 1ST. HE HAS NOT PARTICIPATED IN ANY OF THE DISCOVERY. WHY HE IS NAMED IN THIS CASE THAT I THINK IS BASICALLY EXTRANEOUS TO WHETHER OR NOT THESE PLAINTIFFS WILL EVER RECOVER ANY MONEY. AND IF WE ARE JUST DEFENDANTS IN THE CASE,

THEN WE HAVE TO DO A SERIOUS JOB OF DEFENDING OUR CLIENTS.

THE COURT: IS GREEN A DE LA OSSA TYPE DEFENDANT?

MR. COTCHETT: VERY DEFINITELY. PERHAPS MORESO. BY THE WAY, I WAS JUST HANDED—

THE COURT: DID YOU SAY, NO?

MR. RUBY: IN TERMS OF—

MR. COTCHETT: PERHAPS MORESO. THERE WERE THREE THAT I INADVERTENTLY LEFT OUT. HOWEVER, COUNSEL IS FULLY AWARE OF IT BECAUSE HE RECEIVED A BOX CARD AT HIS OFFICE, ALBERT GREEN, JAMES LYNN MC NEIL, AND JLM CONSULTING, THAT MS. WEINER JUST HANDED AS THREE ADDITIONAL DEFENDANTS.

AGAIN, WE CAN STAND HERE AND TALK ABOUT THE INABILITY TO PREPARE, AND WE WILL SIMPLY RELY UPON C.C.P. SECTION 36. WE WILL FILE OUR PAPERS. WE WILL MARCH DOWNSTREAM AND I AM CONFIDENT THAT MR. DICKEY WILL FILE A VERY WELL DONE DEMURRER. WE WILL FACE THAT, BUT I THINK FACING THAT, IN REALITY OCTOBER 1ST IS A DATE UPON WHICH WE COULD ALL LIVE.

MR. IRVINE: YOUR HONOR, THE POINT I AM TRYING TO MAKE, FIRST OF ALL, OCTOBER 1ST, I AM SUPPOSED TO BE ON VACATION. BUT, FURTHERMORE, I KNOW THAT IS REALLY NOT RELEVANT TO WHETHER WE USE THIS COURTROOM. MY WIFE IS GOING TO BE HEARD ON THAT. BUT, FURTHERMORE, EITHER WE ARE PURE PAWNS. IT DOESN'T REALLY EVEN MATTER WHETHER WE ATTEND THE TRIAL OR NOT. MR. COTCHETT MAY SUGGEST THAT, OR WE ARE REAL DEFENDANTS. IF WE ARE REAL DEFENDANTS, IF WE CAN'T REACH SOME SORT OF SETTLEMENT, I DON'T KNOW WHETHER WE CAN BECAUSE I DON'T KNOW WHY WE ARE

NAMED. I TRIED TO FIGURE THAT OUT. I HAVE SOME IDEAS, BUT NOBODY HAS EVER CONFIRMED THEM. THEN WE OUGHT TO HAVE AN ADEQUATE OPPORTUNITY TO PREPARE THIS CASE FOR TRIAL, AND WE HAVEN'T BEEN INVOLVED, AND THERE ARE SUBSTANTIAL DIFFICULTIES IN GETTING THIS CASE PREPARED FOR TRIAL.

I AM ASSOCIATING ANOTHER FIRM TO HELP ME IN THE CASE, BUT IT IS STILL—I MEAN, THEY ARE DEVOTING HUNDREDS OF THOUSANDS OF HOURS IN THIS CASE. WE HAVE TO DO SOMETHING SIMILAR TO THAT IF WE ARE GOING TO KEEP OUR LICENSE.

MR. COTCHETT: I DON'T WANT TO BELABOR THE POINT. I AM SURE WE WILL COMPLY WITH EVERYTHING GOING DOWNSTREAM. JUST TO HELP PERRY, THOUGH, ALONG THE ROAD OF LIFE, HE DOES UNDERSTAND THAT HIS CLIENT IS TAKING THE FIFTH AMENDMENT. PERHAPS WITHIN THE CONFINES OF HIS OWN LAW PRACTICE AND THE FOUR WALLS IN WHICH HE SITS, HE CAN FIGURE OUT WHY MR. GREEN IS HERE. WITH THAT IN MIND—

THE COURT: IT IS ACTUALLY A BICYCLE PATH OF LIFE.

MR. COTCHETT: BICYCLE PATH OF LIFE, YES. THERE IS AN EXPRESSION THAT IS NOT QUITE THIS, BUT IT IS CLOSE. LIFE IS DIFFICULT AND THEN YOU DIE.

THE COURT: IT IS NOT QUITE LIKE THAT.

MR. COTCHETT: RIGHT, WITH THE GENDER BY SITUATION WE DON'T PUT IT THE WAY IT IS. BUT WE ARE ALL HERE PREPARED TO GO AHEAD, YOUR HONOR.

MR. ROTHSCHILD: I THINK MR. COTCHETT HAS HAD A LOT OF TIME WHERE IT IS GOING TO HAPPEN

WHERE MR. REED HAS HAD NO TIME TO PREPARE FOR THESE CASES, NOT WITH A TRIAL DATE ON OCTOBER 1ST. HE HASN'T BEGUN HIS DISCOVERY. THE SUGGESTION YOU MADE ARE A GOOD STARTING POINT, BUT IT IS ONLY A STARTING POINT. A LOT MORE HAS TO BE DONE BEFORE MR. REED TRIES TO PROCEED WITH TRIAL OR EVEN WITH SETTLEMENT DISCUSSIONS.

I JUST THINK TWO OR THREE MONTHS FROM NOW IS NOT ADEQUATE TIME TO PREPARE FOR THIS COMPLEX TYPE OF CASE.

MR. RUBY: MAY I SAY SOMETHING FOR THE RECORD, PLEASE?

THE COURT: YES.

MR. RUBY: THE FACT OF THE MATTER IS WE ALL KNOW PREPARATION FOR TRIAL, DEPOSITIONS OF DISCOVERY HAS ALREADY BEEN DONE BY THE FINEST LAW FIRMS IN AMERICA, AND SOME OF THE BEST LAWYERS THAT I HAVE EVER SEEN. AND SO ALL OF THE PEOPLE WHO ARE POOR MOUTHING ABOUT THEIR ABILITY TO GET READY FOR TRIAL SHOULD RECOGNIZE AND GIVE THEM THE BENEFIT OF THE DOUBT. THEY DON'T KNOW THAT THERE IS A LITERATURE OF THIS CASE ALREADY DONE WHICH IS SO WELL DONE THAT ANYBODY WOULD BE PRIVILEGED, I THINK, TO REVIEW IT AND GO AHEAD AND TRY THIS CASE.

I THINK THE RECORD SHOULD REFLECT THAT THIS IS NOT A CASE IN WHICH YOU KNOW SOMEBODY IS GOING TO START FROM SCRATCH, WORK UP ON THIS CASE. IT WAS EXTRAORDINARY, AS I SAY, DONE BY SOME BRILLIANT LAWYERS IN DEFENSE OF THIS CASE.

SO I JUST THINK THE RECORD SHOULD REFLECT THE OCTOBER 1ST DATE IN THIS CASE IN MY VIEW IS ENTIRELY REALISTIC, RECOGNIZING THERE IS A

DAILY TRANSCRIPT, RECOGNIZING EXHIBITS HAVE ALREADY BEEN NEATLY CATALOGUED BY THE COURT, AND ANYONE WHO SERIOUSLY WANTS TO GET READY CAN IN MY VIEW AT LEAST BY OCTOBER 1ST.

THANK YOU.

THE COURT: HAVE ANY OF YOU HEARD THE CHIEF JUSTICE' SPEECH ON THE IMPORTANCE OF THE DELAY REDUCTION ACT BY LOT PROJECT? NONE OF YOU HAVE? IF YOU HAVE A CHANCE TO JUST LOOK AT THAT, SEVERAL OF HIS REMARKS HAVE BEEN PUBLISHED HERE AND THERE YOU WILL APPRECIATE WHY I THINK OCTOBER 1ST IS THE RIGHT DATE.

MS. RUSHAKOFF: YOUR HONOR, SUSAN RUSHAKOFF FOR MARIA GARZA. UNLESS I AM MISTAKEN THERE IS AN OCTOBER 3RD TRIAL DATE IN WHICH A NUMBER OF US ARE INVOLVED IN THE IRONWOOD ASSOCIATES CASE.

THE COURT: WHO IS SUING IRONWOOD?

MS. RUSHAKOFF: IRONWOOD IS SUING SECURITY PACIFIC. A NUMBER OF US ARE IN THE CROSS-COMPLAINT.

THE COURT: ARE YOU READY TO GO ON THAT, MR. STONER?

MR. STONER: NO, YOUR HONOR. WE HAVE BEEN TRYING SINCE FEBRUARY TO GET THE IRONWOOD DOCUMENTS. TO DATE, WE STILL DON'T HAVE THEM. SO I DON'T HAVE ANY IDEA WHEN WE WILL BE READY FOR THAT CASE.

THE COURT: WHAT DOCUMENTS?

MR. STONER: THE RECORDS OF THE IRONWOOD PARTNERSHIP SINCE THE BANKRUPTCY.

THE COURT: SINCE THE BANKRUPTCY?

MR. STONER: AS WELL AS THE PRIVILEGE LIST CONSISTENT WITH YOUR ORDER A NUMBER OF

DOCUMENTS WERE WITHHELD BY IRONWOOD. WE ARE UNABLE TO DETERMINE WHAT DOCUMENTS WERE WITHHELD BECAUSE WE HAVE BEEN UNABLE TO GET COMPLIANCE WITH THE ORDER THAT REQUIRES A LISTING OF PRIVILEGED DOCUMENTS WITHHELD.

THE COURT: WHO IS THE LAWYER FOR IRONWOOD?

MR. STONER: MR. COHEN.

THE COURT: WELL, COUNSEL FOR MS. GARZA, SAY YOUR NAME AGAIN?

MS. RUSHAKOFF: SUSAN RUSHAKOFF.

THE COURT: RUSHAKOFF? MS. RUSHAKOFF, IT IS NOT UNUSUAL TO DOUBLE SET CASES.

MS. ARAND: YOUR HONOR, IF I MAY, MARY ARAND FOR JOE BAYLSON. THERE IS ONE ISSUE THAT RELATES TO HIM. THAT IS HIS PERSONAL BANKRUPTCY. STAY WAS LIFTED TO LET THE TRIAL PROCEED, BUT I BELIEVE THE STAY IS STILL IN EFFECT WITH RESPECT TO THE OTHER 500 SOME ODD CASES. THAT IS A TECHNICAL ISSUE THAT DOESN'T NEED TO BE RESOLVED.

THE COURT: DOESN'T THAT BEAR ON THE PRIVILEGE? HE CANNOT BOTH TAKE THE PRIVILEGE AND FILE BANKRUPTCY; AM I RIGHT ABOUT THAT?

MS. ARAND: I AM NOT PRECISELY CLEAR ON WHAT THE LAW IS ON THAT, YOUR HONOR, BUT I DON'T KNOW THAT RELATES TO WHETHER OR NOT THERE IS A STAY IN EFFECT.

MR. RUBY: YOUR HONOR, IN MY VIEW THE BANKRUPTCY COURT DISSOLVED THE STAY AS TO ALL OF THE COORDINATED LITIGATION. IF I AM WRONG, MS. ARAND AND I CAN MEET AND CONFER ON THIS. IF WE DISAGREE WE WILL, OF COURSE, GO BACK TO THE BANKRUPTCY COURT AND HAVE THAT CLARIFIED.

THE COURT: YOU SHOULD DO THAT.

MR. RUBY: WE WILL DO THAT.

MS. ARAND: THANK YOU, YOUR HONOR.

THE COURT: NOW, SHALL WE GO TO THE CLASS CASES? WELL, I TELL YOU—

MR. DICKEY: YOUR HONOR, IT IS STILL UNCLEAR TO EVERYBODY WHICH CASES YOU HAVE SET.

THE COURT: WE WILL GO THROUGH A PROCESS, AND IT WILL BE A PROCESS THAT WILL TAKE NOT VERY MUCH TIME PERHAPS IN THE NEXT TWO WEEK WHERE WE ARE GOING TO CHOOSE SOME OF THESE CASES FOR TRIAL.

MR. DICKEY: MAY WE SUBMIT A BRIEF WITH RESPECT TO THAT?

THE COURT: ABSOLUTELY. OF COURSE, YOU CAN DO THAT. WE WILL TAKE A RECESS NOW AND WE WILL BE BACK IN SESSION IN ABOUT 10 MINUTES.

MR. RUBY: YOUR HONOR, MAY MY OFFICE BE EXCUSED. WE ARE NOT PARTIES TO THE CLASS PROCEEDINGS. DOES THE COURT WISH US TO REMAIN FOR ANY FURTHER MATTERS ON THE PLG CASES?

THE COURT: JUST YOU, MR. RUBY, MAY YOU BE EXCUSED?

MR. RUBY: YES. MAY I BE EXCUSED, PLEASE?

THE COURT: YES, YOU CAN GO.

MR. RUBY: THANK YOU.

THE COURT: I WILL TAKE UP THE CLASS CASES WHEN WE RETURN.

(SHORT RECESS TAKEN.)

THE COURT: NUMBER 14, NO. 18 AND NO. 22?

MR. STONER: YOUR HONOR, COULD I CLEAR UP ONE THING FROM THIS MORNING ON THE SECURITY PACIFIC CASES WHERE SECURITY PLAINTIFFS,

PLAINTIFF AGAINST THE PARTNERSHIP CASE HAS BEEN SETTLED AGAINST THE TEPLG GUARANTOR OR GENERAL PARTNER?

THE CLAIM BY THE BANK AGAINST THE PARTNERSHIP ITSELF ON THE PROMISSORY NOTE IS STILL VIABLE. SO THE CASE WHEN MR. RUBY AND I WERE TALKING ABOUT THE CASE BEING SETTLED AGAINST THE INDIVIDUAL PERSON, DON DRYSDALE, SHANDRASHAKAR, ADOLF PFEFFERBAUM, HAS NOT BEEN SETTLED AGAINST THE PARTNERSHIP. WE WOULD JUST NO LONGER BE LOOKING TOWARD THE GENERAL PARTNER GUARANTOR.

THE COURT: DO SOME OF THESE PARTNERSHIPS HAVE PROPERTY?

MR. STONER: WE ARE HAVING A VERY DIFFICULT TIME FINDING OUT THE CURRENT STATUS OF SEVERAL OF THESE, AND WE JUST DON'T KNOW. THEY MAY HAVE RIGHTS TO PROPERTY. WE ARE UNCERTAIN OF THE ASSETS OF THE VARIOUS OF THESE PARTNERSHIPS. BUT IF IT TURNS OUT, FOR EXAMPLE, THAT J.C. BURNING TREE HAS NO ASSETS AND THERE IS NOTHING, THEY DON'T HAVE ANY CLAIMS AGAINST OTHER PEOPLE'S ASSETS AS A RESULT OF THE COLLAPSE OF TECHNICAL EQUITIES, THEN IN A CASE LIKE THAT THERE WOULD BE NO ASSETS TO PROCEED AGAINST SINCE THE GENERAL PARTNER IS OUT OF THE PICTURE.

THE COURT: EXPLAIN TO ME, ARE YOU SAYING TO ME THAT IT IS POSSIBLE THAT, SAY, J.C. BURNING TREE MIGHT HAVE A CLAIM AGAINST SOMEBODY LIKE LINDBERG? IS THAT WHAT YOU MEAN?

MR. STONER: IT IS POSSIBLE.

THE COURT: THEN THE BANK WOULD PICK THAT CAUSE OF ACTION UP AND ASSERT IT ON BEHALF OF—

MR. STONER: IF J.C. BURNING TREE ASSOCIATES ASSERTED CLAIMS ON BEHALF OF ITS INVESTOR, LIMITED PARTNERSHIPS, AND RECOVERED A LARGE POT OF MONEY, THEN THE BANK WOULD BE A CREDITOR ON THAT POT OF MONEY. I JUST WANTED TO MAKE IT CLEAR THAT THE SETTLEMENT THAT THE BANK HAS ENTERED INTO WAS WITH THE INDIVIDUAL GENERAL PARTNERS.

THE COURT: SO THERE REMAINS A CASE CALLED SECURITY PACIFIC VS.—

MR. STONER: V. J.C. BURNING TREE ASSOCIATES.

THE COURT: IN EACH OF THOSE CASES?

MR. STONER: THAT'S CORRECT.

THE COURT: WOULD YOU GET TOGETHER WITH JOHN AFTER THIS HEARING IS OVER AND GO OVER AND SHOW THE REMAINING PARTIES?

MR. STONER: CERTAINLY, YOUR HONOR.

THE COURT: ALL RIGHT. THE THREE CLASS CASES.

MR. PLUTZIK: YOUR HONOR, ALAN PLUTZIK OF THE DAVID B. GOLD LAW FIRM AND LUCY MC ALLISTER ON BEHALF OF CLASS PLAINTIFFS.

THE COURT: GO AHEAD.

MR. PLUTZIK: AS YOUR HONOR KNOWS, THE FEDERAL COURT JUDGE INGRAM HAS SET A HEARING ON PLAINTIFF'S MOTION FOR CLASS CERTIFICATION IN THE FEDERAL COURT FOR JULY 25TH, AND WE BELIEVE THAT THE STATUS, FUTURE STATUS OF THESE STATE COURT CASES MAY IN SOME FASHION DEPEND ON THE OUTCOME OF THE MOTION. SO WE WOULD REQUEST THAT THE COURT SET THESE MATTERS FOR ADDITIONAL STATUS CONFERENCE AT SOME TIME AFTER THAT HEARING DATE.

THE COURT: WHAT IS MS. SHAMMAS' CLAIM? HOW MUCH?

MR. PLUTZIK: HER PERSONAL CLAIM, I BELIEVE, IS IN THE NATURE OF SIXTY TO $70,000 CASH INVESTED.

THE COURT: IN NOTES?

MR. PLUTZIK: I THINK THERE'S SOME DEBENTURES, BUT IT IS PRIMARILY NOTES, AND I THINK THERE IS ALSO A PARTNERSHIP CLAIM. THERE IS A PARTNERSHIP CLAIM, I BELIEVE. SHIRE ASSOCIATES, MR. DICKEY TELLS ME.

THE COURT: AND VERNON THOMAS, WHAT IS HIS CLAIM?

MR. PLUTZIK: HIS CLAIM IS ON A CASH INVESTED BASIS OF ABOUT $900,000, AND IT CONSISTS OF A SMATTERING OF VARIOUS—A LOT OF PARTNERSHIP INVESTMENTS AND SOME OTHER INVESTMENTS AS WELL. THERE ARE ADDITIONAL CLASS REPRESENTATIVES NAMED IN THE THOMAS COMPLAINT, I BELIEVE GREGAR AND MS. MC CLINTOCK.

THE COURT: GUYER?

MR. PLUTZIK: GUYER'S CLAIM IS $6,400. HIS PERSONAL CLAIM CONSISTS OF DEBENTURES AND I BELIEVE A LITTLE BIT OF STOCK, AGAIN, ON A CASH INVESTED BASIS. AND THERE IS ALSO MARSHALL PETERSON IN THIS CASE WHO HAD AN SMA NOTE IN THE FACE AMOUNT OF SOMETHING LIKE $420,000.

THE COURT: ALL RIGHT. MR. DICKEY?

MR. DICKEY: ALL OF THE INSTITUTIONAL DEFENDANTS ARE STILL IN THESE ACTIONS. I DON'T PURPORT TO SPEAK ON THEIR BEHALF, BUT I DO BELIEVE THAT IT MAKES SENSE FOR THIS COURT TO DEFER THE MATTER OF SCHEDULING THESE CASES FOR ANY FURTHER ACTIVITY UNTIL WE HAVE LET JUDGE INGRAM ADDRESS BOTH THE CLASS ISSUES. AT LEAST, MR. PLUTZIK AND I HAVE

BEEN TALKING ABOUT DOING DISCOVERY IN THE FEDERAL FORUM.

I DON'T SEE ANY REASON WHY WE SHOULD BE TAKING UP YOUR TIME WITH THESE CASES SINCE WE ARE PERFECTLY ABLE TO DO THAT IN A FEDERAL FORUM AT THIS POINT.

MR. PLUTZIK: I WOULD SIMPLY SUGGEST, YOUR HONOR, THAT THE COURT, IF IT WISHES, CAN SET THESE MATTERS FOR STATUS CONFERENCE PERHAPS IN AUGUST OR SEPTEMBER, AND WE CAN DISCUSS AT THAT POINT WHAT, IF ANYTHING, IS GOING TO HAPPEN.

THE COURT: ANYONE ELSE WANT TO BE HEARD ON THIS?

WELL, I WAS GOING TO SEND THESE THREE TO ARBITRATION.

MR. PLUTZIK: PLEASE DON'T DO THAT, YOUR HONOR.

THE COURT: WHY NOT? WELL, DOESN'T MR. GUYER WANT HIS? THESE ARE MR. THOMAS IS $900,000 OUT. THAT IS HARDLY THE KIND OF CASE THAT OUGHT TO BE CONNECTED UP WITH THE BUNCH OF PEOPLE WHO ARE IN FOR SIX THOUSAND OR THREE THOUSAND OR THE LIKE. I MEAN, EVEN—I GUESS I SHOULDN'T SAY THAT.

MR. PLUTZIK: I THINK, YOUR HONOR, THAT THE COURT WILL BE BETTER—IT WILL BE A MORE APPROPRIATE TIME TO MAKE THAT DECISION AFTER JUDGE INGRAM HAS MADE HIS DECISION. THESE PEOPLE ARE CLASS REPRESENTATIVES, AND BOTH IN THE FEDERAL AND THE STATE COURTS.

MR. COATS: YOUR HONOR, I MIGHT NOTE THAT JUDGE INGRAM HAS SET A TRIAL DATE IN THE CLASS ACTION ALSO OF APRIL 17TH. SO, I MEAN, THERE IS A FORUM IN WHICH THEY ARE GOING TO BE ADJUDICATED IN THE RELATIVELY NEAR

FUTURE. IT IS A NONBINDING JUDICIAL ARBITRATION. SO IF IT IS ADVERSE TO MY CLIENT, I AM JUST GOING TO BE BACK AND WE ARE GOING TO HAVE A TRIAL DATE. IT IS NOT GOING TO SERVE ANY USEFUL FUNCTION WHEN WE ALREADY HAVE A TRIAL DATE. I THINK THIS MIGHT BE AN EXERCISE IN FUTILITY.

MR. PLUTZIK: AGAIN, I WOULD PROPOSE THAT SUGGESTION MIGHT BE TAKEN UP AT A LATER TIME.

THE COURT: MR. JOHNSTON?

MR. JOHNSTON: YOUR HONOR, IT IS HARD TO KNOW EXACTLY WHAT TO DO HERE. OBVIOUSLY, THE CLASS PLAINTIFFS ARE TRYING TO PROCEED IN BOTH FORUMS AND WAIT UNTIL THE LAST MINUTE TO CHOOSE THE PREFERRED FORUM, AND THEY WANT--FIRST, THEY TRIED TO GET A CLASS CERTIFIED HERE AND IT DIDN'T WORK. AND, NOW, THEY HAVE GONE OVER TO FEDERAL COURT. THEY WANT YOU TO STOP AND WAIT UNTIL THEY SEE WHAT LUCK THEY HAVE WITH JUDGE INGRAM.

I ASSUME IF JUDGE INGRAM SEES IT AS YOU DO, WELL, THEY WILL BE BACK HERE ASKING YOU FOR AN EARLY TRIAL DATE, AND I AM BOTHERED BY THE NOTION THAT WE ARE JUST GETTING WHIPSAWED BETWEEN THESE TWO FORUMS.

NOW, YOUR HONOR WANTED TO SET AN EARLY TRIAL DATE. I THINK IT OUGHT TO BE A BINDING ADJUDICATION ON THIS.

YOU KNOW, WE HAD BEEN READY TO GO ON THIS. DISCOVERY HAS BEEN DONE. YOU KNOW, THERE IS NO CLASS, BUT WE COULD GO ON THE INDIVIDUAL CASES AND DO THAT QUICKLY.

THE COURT: HOW MANY CASES ARE THERE OF YOURS, MR. PLUTZIK?

MR. JOHNSTON: THERE ARE THREE CASES. I THINK THERE ARE A NUMBER OF DIFFERENT INDIVIDUAL PLAINTIFFS. THERE ARE MORE THAN THREE INDIVIDUAL PLAINTIFFS, BUT I THINK—

MR. PLUTZIK: WE HAVE TEN INDIVIDUAL PLAINTIFFS IN THIS FORUM, AND IN THE FEDERAL FORUM THERE ARE FOUR ADDITIONAL INDIVIDUAL PLAINTIFFS WHO HAVE BEEN ADDED AS TO WHOM WE ARE NOW ALSO CO-COUNSEL WITH LIEF & CABRAZER. THAT MAKES FOURTEEN.

THE COURT: AH, THAT IS NEWS; ISN'T IT?

MR. JOHNSTON: THOSE PEOPLE ARE NOT BEFORE YOUR HONOR.

MR. PLUTZIK: THEY ARE NOT IN THIS FORUM, BUT THEY ARE CLASS REPRESENTATIVES, ADDITIONAL CLASS REPRESENTATIVES IN THE CLASS THAT JUDGE INGRAM WILL RULE ON.

MR. JOHNSTON: YOU KNOW, DISCOVERY HAS LARGELY BEEN DONE ON THAT, YOUR HONOR. I THINK WE OUGHT TO. I DON'T KNOW WHAT YOUR CALENDAR IS.

THE COURT: WELL, WHEN IS JUDGE INGRAM'S HEARING, THE 26TH?

MR. PLUTZIK: TWO WEEKS FROM YESTERDAY. I'M SORRY, WHAT IS TODAY? WEDNESDAY. IT IS THE 25TH. IT IS ABOUT 11 DAYS FROM NOW.

THE COURT. WE WILL SET A STATUS CONFERENCE ON SEPTEMBER 7TH. IS SEPTEMBER 7TH A WEDNESDAY?

THE CLERK: YES, THAT'S CORRECT.

MR. PLUTZIK: YOUR HONOR, THERE IS ONE MINOR MATTER IN CONNECTION WITH THIS. THE CASE NUMBER WITH THE LEAD CASE NUMBER FOR THE CLASS ACTIONS WAS THE DRYSDALE COMPLAINT. MRS. DRYSDALE IS REPRESENTED BY MR. COTCHETT AND HAS AN INDIVIDUAL CLAIM, AND

SO THERE WILL NEED TO BE SOME SORT OF AN ADJUSTMENT OF THAT. WE WILL SUBMIT SOME KIND OF—

MR. DICKEY: YOUR HONOR, WHAT HE IS TRYING TO SAY IS MRS. DRYSDALE WAS ORIGINALLY A LEAD CLASS REPRESENTATIVE.

THE COURT: I UNDERSTOOD HIM. I JUST TRIED TO FIGURE OUT WHY I SHOULD DO ANYTHING. I MEAN, THE CASE IS HERE, AND GINGER DRYSDALE IS NOT YOUR CLIENT; IS THAT RIGHT?

MR. COTCHETT: SHE HAS SETTLED, YOUR HONOR.

THE COURT: SHE HAS SETTLED?

MR. COTCHETT: YOU ARE RIGHT, YOUR HONOR.

THE COURT: DOES THAT MEAN YOU DON'T HAVE A CASE?

MR. PLUTZIK: NO. I AM NOT SUGGESTING THAT WE DON'T HAVE A CASE.

YOUR HONOR, I THINK PERHAPS THIS IS SOMETHING THAT WE CAN DO AT A LATER TIME.

THE COURT: LIKE SUBSTITUTING HANNAH SHAMMAS FOR GINGER DRYSDALE?

MR. PLUTZIK: NO. THE DISCUSSION NEEDS TO BE DONE. IT IS THE CAPTION FOR THE CASES.

THE COURT: I DON'T SEE IT AS A PROBLEM. WE CAN TELL THE DIFFERENCE.

MR. PLUTZIK: THAT IS FINE.

THE COURT: ALL RIGHT. NOW, ANYTHING ELSE ON THIS CALENDAR?

MS. WEINER: YOUR HONOR, IT MAY BE HELPFUL TO THE COURT IF THE GLENWOOD IS DOWN AS AN ACTION. ALL I KNOW ON GLENWOOD THEIR COUNSEL CALLED ME A YEAR AND A HALF AGO AND SAYS, PLEASE TAKE THE CASE OFF THE MASTER SERVICE.

MR. COTCHETT: THAT IS NO. 7, YOUR HONOR. SO PERHAPS THAT WOULD HELP ALLEVIATE THE CALENDAR.

THE COURT: I AM GOING TO SET THIS CASE ON THE COURT'S OWN MOTION FOR DISMISSAL ON SEPTEMBER 7TH FOR FAILURE OF PROSECUTION.

MR. JOHNSTON: YOUR HONOR, THERE MAY BE SEVERAL OTHER CASES THAT ARE IN THE SAME CATEGORY. I DON'T KNOW THAT I FOLLOWED ALL THE NUMBERS THAT WE HAVE GONE THROUGH HERE, BUT THERE ARE SOME CASES ON HERE THAT WE WERE COMPLETELY UNAWARE OF. NUMBER 10.

THE COURT: JEAN GREEN? NO APPEARANCE ON THAT CASE. I WILL SET THAT FOR DISMISSAL ON THE SAME DATE.

MR. JOHNSTON: NUMBER 16.

MR. PLUTZIK: YOUR HONOR, MAY I ADDRESS JOHN VELLA? HE IS A PERSON WHO HAS BEEN IN COMMUNICATION WITH OUR OFFICE IN CONNECTION WITH THE CLASS ACTIONS.

THE COURT: HE IS A PROSPECTIVE CLASS PLAINTIFF?

MR. PLUTZIK: I BELIEVE HE IS RELYING ON THE CLASS ACTIONS.

THE COURT: WOULD YOU PERFORM—

MR. PLUTZIK: ALL I WANTED TO SUGGEST WAS THAT THE COUNSEL OF RECORD IN THAT CASE IS A GENTLEMAN NAMED COOPER WHO HAS NOT APPEARED TODAY. I WOULD LIKE TO SUGGEST THAT THE COURT PASS ON THIS PARTICULAR ONE AND PERMIT ME TO SPEAK WITH MR. VELLA AND ASCERTAIN HIS INTENTION WITH RESPECT TO THIS INDIVIDUAL ACTION THAT WAS FILED IN HIS BEHALF.

MR. JOHNSTON: YOUR HONOR, AS FAR AS I KNOW, THAT CASE HAS NEVER BEEN SERVED AT LEAST ON US.

THE COURT: I AM GOING TO SET IT FOR DISMISSAL ON THE SAME DATE. YOU CAN COMMUNICATE WITH THE COURT AND HAVE MR. COOPER COMMUNICATE WITH THE COURT OR IF YOU PREFER, TAKE IT OFF.

MR. PLUTZIK: THANK YOU, YOUR HONOR.

THE COURT: ANY OTHERS, MR. JOHNSTON?

MR. JOHNSTON: I BELIEVE THAT IS ALL THE ONES THAT I HAD QUESTIONS ABOUT, YOUR HONOR. MR. COATS MAY BE ABLE TO BACK ME UP.

MR. COATS: NO, YOUR HONOR. THAT IS THE SAME LIST OF CASES I WAS INTERESTED IN BECAUSE WE HAD NEVER SEEN THEM BEFORE.

MR. PLUTZIK: JUST, YOUR HONOR, A POINT OF CLARIFICATION. WHEN YOU SAY YOU ARE SETTING A CASE FOR DISMISSAL, I TAKE IT THIS IS AN ORDER TO SHOW CAUSE WHY IT SHOULD NOT BE DISMISSED? WHAT IS THE PROCEDURE AS TO THAT?

MR. COATS: THESE ARE CASES THAT ARE NOT SERVED WITHIN THE AMIBIT OF THE COURT'S PRIOR ORDER AS TO WHEN ALL CASES SHOULD BE SERVED BY.

THE COURT: I DON'T KNOW WHAT THE FORMAL MOTION IS GOING TO BE. I AM GOING TO SORT THAT OUT WHEN I GET OFF THE BENCH, BUT IT IS AN EFFECTIVE ATTENTION-GETTING DEVICE UNDER ANY CIRCUMSTANCES.

MR. PLUTZIK: I ASSUME THAT THE COURT IS SPEAKING ABOUT A DISMISSAL WITHOUT PREJUDICE OF THE CLAIMS?

THE COURT: OH, NO, NO. THIS IS WITH PREJUDICE OF THE CLAIM. MY POINT, IF IT IS NOT

EVIDENT TO EVERYBODY IS THAT I AM GOING TO TEAR THESE CASES DOWN UNTIL I UNDERSTAND EACH ONE OF THEM, AND THEN WE ARE GOING TO TRY THEM, AND PEOPLE WHO HAVEN'T SERVED THEIR COMPLAINT OR HAVEN'T APPEARED IN THE LIKE OR FINISHED. SO THAT IS MY AIM HERE.

MR. PLUTZIK: YOUR HONOR, MY POINT IS THAT MR. VELLA'S COMPLAINT WAS FILED QUITE EARLY IN THIS WHOLE PROCESS, AND IT MAY WELL HAVE BEEN HIS INTENTION. I BELIEVE IT IS, THAT WE RELY ON THE CLASS TO SECURE HIS RELIEF AND TO DISMISS, TO DISMISS. AN INDIVIDUAL CASE LIKE THIS WOULD PREJUDICE, MIGHT HAVE THE EFFECT OF IMPAIRING HIS RIGHTS IN THAT CONNECTION.

THE COURT: TELL JUDGE INGRAM THAT RUSHING IS OVER THERE TRYING TO DISMISS THESE CASES, SO ON AND SO FORTH, BUT AS I TOLD YOU IF YOU WANT TO APPEAR FOR MR. VELLA, I WILL TAKE IT OFF THE SEPTEMBER CALENDAR. THAT IS FAIR ENOUGH; ISN'T IT?

MR. PLUTZIK: IF I ENTER AN APPEARANCE IT WILL BE OFF THE CALENDAR?

THE COURT: THAT IS TRUE, YES.

MR. PLUTZIK: THANK YOU, YOUR HONOR.

THE COURT: IT IS ON THE CALENDAR.

MR. STONER: I QUESTION ABOUT THE TWO ADDITIONS AT MATTER. ONE IS NO. 15. OUR OFFICE DIDN'T HAVE ANY RECORD OF ANYBODY NAMED WESSERMAN, BUT THERE IS A WASSERMAN OUT THERE.

MR. RUBY: I REPRESENT DR. WASSERMAN, AND UNFORTUNATELY DR. PRESTON WHO KNOWS ABOUT THESE THINGS IS NOT HERE. WE WILL TRY TO FIND OUT. WESSERMAN AND WASSERMAN ARE THE SAME PERSON.

THE CLERK: NO, I MADE A TYPO ON THIS.

MR. RUBY: SO IT IS WASSERMAN I WOULD BE SURE IN MY MIND, BUT THE CASE NUMBER ISN'T CONGRUENT WITH THE OTHER CASE NUMBERS, BUT WE WILL INVESTIGATE THAT.

THE CLERK: THE ORIGINAL ATTORNEY WAS A MAN BY THE NAME OF STEIN.

MR. RUBY: I SUBSTITUTED. THAT IS OURS. I SUBSTITUTED IN ON THAT CASE. SO THAT IS OURS.

MR. STONER: ANOTHER ONE, I HAVE A QUESTION ON IS NO. 17.

MR. RUBY: THAT IS OURS.

MR. STONER: THE CASE NUMBER I HAD FOR SOMEONE NAMED LUTTRULL I THINK HAS ALSO BEEN SETTLED.

THE COURT: 17?

MR. STONER: 17, 596605 I HAD AS A JAMES LUTTRULL VS. STERN AND ROSE WEINER, I HAD WITH A DIFFERENT CASE NUMBER.

THE CLERK: THAT'S CORRECT. I MADE THE CHANGES BUT THEY DIDN'T SHOW UP ON THIS OTHER ONE. BUT I MADE CHANGES ON THE OTHER LIST.

THE COURT: WHAT, JOHN?

THE CLERK: THAT'S CORRECT.

MR. RUBY: ROSE WEINER IS OUR CLIENT. THERE IS SOME INCONSISTENCY IN THE CASE NUMBERS.

THE COURT: ALL RIGHT.

MS. GRUEN: YOUR HONOR, I ALSO HAVE A QUESTION. MY NAME IS JAN GRUEN REPRESENTING ERNEST DE LA OSSA. THAT WOULD BE NO. 23, LOLITA ISON.

MR. RUBY: THAT IS OURS.

MS. GRUEN: IT'S GOT A DIFFERENT CASE NUMBER AGAIN.

MR. RUBY: THERE ARE A COUPLE OF THESE, YOUR HONOR, WHERE WE HAVE ALREADY VISITED WITH COUNSEL. IF THERE IS SOME INCONSISTENCY IN THE CASE NUMBERS, I RECOGNIZE THEM BY NAME. MRS. ISON IS—WELL, WE WILL WORK THIS OUT WITH MR. FOSTER AND WE WILL MAKE SURE WHY THE CASE NUMBERS SEEM TO BE INCONSISTENT.

MR. ORTON: YOUR HONOR, GARY ORTON REPRESENTING WILLIAM SCHISANO AND WILLIAM FOLEN. GOING BACK I DID NOT HAVE THE OPPORTUNITY BEFORE TO RESPOND TO THE COURT'S REQUEST, THAT DIRECTION THAT THESE CASES OR ONE OF THESE CASES MIGHT BE SET FOR TRIAL IN OCTOBER. THAT IS 75 DAYS AWAY, YOUR HONOR. WE HAVE JUST RECENTLY GOT THE CASE.

NOW, UNLESS A WEHNER, DE LA OSSA TYPE OF ARRANGEMENT IS MADE, THIS WILL NOT GIVE US ADEQUATE TIME TO EITHER PREPARE AS TO READ THROUGH THE MANY DOCUMENTS AND DEPOSITIONS, AND WE HAVE ACQUIRED THOSE, AND WE ARE DILIGENTLY TRYING TO PREPARE, BUT I WANT TO POINT OUT UNLESS ARRANGEMENT AS INDICATED BY MR. COTCHETT IS ENTERED INTO WOULD NOT GIVE US ADEQUATE TIME TO USE MR. COTCHETT'S ANALOGY, "YES, WE ARE ON THE RIVER. WE'D LIKE TO BE GOING DOWN THE RIVER WITH YOU." YOU ARE JUST TAKING BOTH OARS AWAY FROM US PUTTING HOLES IN OUR CANOE BECAUSE IT IS ONLY 75 DAYS UNTIL TRIAL.

THANK YOU.

MR. WALTER: ALLEN WALTER FOR MR. RUSSO. HE IS IN EXACTLY THE SAME SITUATION. WE HAVE NO DISCOVERY. IT WILL TAKE US TO OCTOBER 1ST TO GO THROUGH THE DAILIES AND TO REVIEW THE DEPOSITIONS.

THE COURT: YOU DON'T HAVE A METAPHOR TO AMUSE THE COURT?

MR. WALTER: HOW ABOUT—NO, I'D RATHER NOT.

MR. IRVINE: YOUR HONOR, I DO. IT OCCURRED TO ME THAT JUDGE INGRAM TOLD MR. NOLAND HE WASN'T GOING TO TAKE ANY BREAKS. MR. NOLAND GOT INTO COURT AND HAD TOO MANY WORDS ABOUT BREAKS. BUT IT OCCURRED TO ME WE WERE DOWN IN FRONT OF JUDGE INGRAM LAST WEEK IN THE TEC VS. MAIN HURDMAN CASE, AND WHILE WE WERE THERE MR. ALEXANDER ON BEHALF OF THE OUTSIDE DIRECTORS AND MR. WAYBELL ON BEHALF OF JUDD LEIGHTON WAS ARGUING THAT THE FEDERAL COURT SHOULD ABSTAIN EITHER ON A MANDATORY ABSTENTION OR ON DISCRETIONARY ABSTENTION FROM TAKING THAT CASE. THAT CASE REPRESENTS A MAJOR HURDLE TO SETTLING A GLOBAL SETTLEMENT. AND WHAT I'D SUGGESTED, THEREFORE, THE ANALOGY COMES IN IS THAT WE HAVE OUT HERE A TEAM—NOT A TEAM—WE HAVE A HERD OF WILD HORSES, AND THAT THE ONLY WAY THAT THIS HERD OF WILD HORSES WILL EVER BE TAMED IS TO BRING THEM INTO THIS ONE CORRAL WHICH SUGGESTED THAT THE COURT SHOULD ABSTAIN, THE FEDERAL COURT SHOULD ABSTAIN FROM TAKING ON THE TEC VS. MAIN HURDMAN CASE SO THAT THEY WOULD BE FORCED TO LITIGATE THEIR MATTER IN THIS COURT. AND THAT IF THAT IS SUCCESSFUL, THEN WE WILL ALL BE IN ONE CORRAL, AND THEN YOU CAN TAME US, IF YOU WILL, AND WHAT THAT WILL DO, THAT WILL BRING TO FOCUS THE ISSUE, AND THE REASON THAT MR. SCHISANO AND ALL THESE OTHER DEFENDANTS HAVE RECENTLY BEEN NAMED, AND THAT IS AN ATTEMPT TO GET NATIONAL UNION TO LOOK AT THIS CASE IN A

REALISTIC FASHION. AND I REALIZE THAT FORCING TRIAL DATES, OCTOBER 1ST TRIAL DATE IS ONE WAY OF DOING THAT, BUT IT IS NOT THE ONLY WAY, AND I'D LIKE TO SUGGEST THAT I THINK JUDGE INGRAM NOW HAS UNDER SUBMISSION THESE ABSTENTION MOTIONS, AND IF, AS WE HOPE, HE RULES FAVORABLY AND KNOCKS OUT THOSE CASES AND SENDS THEM OVER, TELLS MAIN HURDMAN, TEC, IF YOU WANT TO LITIGATE YOU ARE GOING TO HAVE TO DO IT IN FEDERAL COURT, WE WILL BE IN A MUCH BETTER POSITION TO GET THIS ENTIRE THING WOUND UP AT LEAST AS TO THOSE PEOPLE WHO ARE COVERED UNDER THE NATIONAL UNION POLICY THAN BY THE PROCEDURE WE ARE FOLLOWING RIGHT NOW.

MR. RUBY: YOUR HONOR, I'D LIKE TO OBJECT TO ANY SUGGESTION THAT ANY TRIAL SETTINGS HAVE ANYTHING, OR OUR REQUEST FOR TRIAL SETTINGS HAVE ANYTHING TO DO WITH THE INSURANCE COMPANY THAT HE NAMED OR ANY CONSIDERATIONS LIKE THAT. WE WANT TO GET OUR CASE TO TRIAL UNDER SECTION 36, AND I WOULD VERY STRONGLY OBJECT TO THE SUGGESTION THAT ANY OTHER CONSIDERATIONS ARE AT WORK. I THINK IT IS INAPPROPRIATE, UNFOUNDED.

I WOULD RESPECTFULLY ASK THE COURT NOT TO CONSIDER ANYTHING OF THAT CHARACTER BUT CONSIDER WHAT MR. COTCHETT SAID WHICH IS A LEGISLATIVE POLICY GETTING CASES TO TRIAL.

THANK YOU.

THE COURT: WELL, IF IT ISN'T CLEAR FROM THE MANY TIMES I HAVE HAD TO SAY THIS, THAT I BELIEVE THAT THE COORDINATION RULES UNDER THE STATUTORY SCHEME MEANS WHAT IT SAYS.

WE ALSO HAVE, AS I SAID, THE CHAIRPERSON OF THE JUDICIAL COUNCIL WHO HAPPENS ALSO TO BE

THE CHIEF JUSTICE WHO HAS GONE AROUND THE STATE SAYING WE HAVE GOT TO GET RID OF THESE TRIAL COURT DELAYS. I THINK THAT'S RIGHT.

ANYTHING MORE, THOUGH, ON THIS CALENDAR?

MR. COTCHETT: YES, YOUR HONOR. I WOULD LIKE TO MOVE TO ADJOURN THIS MORNING IN MEMORY OF BOB CARTWRIGHT. HE WAS A LAWYER IN THIS CASE, A TRULY OUTSTANDING HUMAN BEING, A GENTLEMAN. TWO WEEKS AGO UNFORTUNATELY BOB DIED. HE WAS A TRUE LAWYER IN EVERY SENSE, AND I THINK IT WOULD BE VERY BEFITTING FOR THIS HONORABLE COURT TO ADJOURN THESE PROCEEDINGS THIS MORNING IN HIS MEMORY.

THE COURT: YES. WE WILL ADJOURN IN THE MEMORY OF BOB CARTWRIGHT. THANK YOU, MR. COTCHETT.

ALL RIGHT. WE WILL SEE YOU NEXT WEEK FOR A SIMILAR PROCEEDING.

(WHEREUPON AT 11:00 O'CLOCK A.M., COURT ADJOURNED.)

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
COURTROOM NUMBER 100
BEFORE THE HONORABLE CONRAD L. RUSHING,
JUDGE

Coordinated Proceeding,	Coordinated Proceeding
Special Title (Rule 1550(B))	Master File Number 1991
Technical Equities Case	Santa Clara County
	Superior No. 600306

STATUS HEARING

JULY 27, 1988

SANTA CLARA, CALIFORNIA **JULY 27, 1988**

MORNING SESSION

THE COURT: COUNSEL, GOOD MORNING.

ALL RIGHT. CALL THE CALENDAR.

THE CLERK: THE GOOD FAITH MOTIONS, NUMBER 1, BANK OF THE WEST MOTION FOR GOOD FAITH DETERMINATION.

MR. BERTRAND: PETER BERTRAND ON BEHALF OF BANK OF THE WEST.

YOUR HONOR—

THE COURT: YES.

MR. BERTRAND: PURSUANT TO THIS COURT'S ORDER OF LAST WEEK WE SERVED A COPY OF OUR ORIGINAL MOTION ON ALL PARTIES LISTED ON THE COURT'S MOST RECENT SERVICE LIST. IN ADDITION WE GAVE NOTICE TO THE BANKRUPTCY TRUSTEE AND OTHER INDIVIDUALS THAT WE BELIEVE MIGHT HAVE SOME INVOLVEMENT.

THIS MORNING WHEN I ARRIVED I ACTUALLY SAW A COPY OF AN OPPOSITION ON BEHALF OF MR. RUSSO, ALTHOUGH I HAVE NOT HAD TIME TO LOOK AT IT IN ANY DETAIL.

I WAS NOT SERVED WITH A COPY OF ANY OPPOSITION.

THE COURT: I'VE RECEIVED FILE ENDORSED JULY 27TH OPPOSITION BY STEPHEN J. RUSSO.

AND JAMES LYNN MCNEIL.

MR. HARRISON, DO YOU WISHING TO SPEAK?

MR. HARRISON: YES, YOUR HONOR.

THE COURT: AND MR. HARRISON, I HAVE READ YOUR PAPERS.

MR. HARRISON: FINE. JEFFREY B. HARRISON FOR STEPHEN RUSSO, YOUR HONOR.

JUST BRIEFLY, WE RECEIVED AS THE DOCUMENTS INDICATE, THE MOVING PAPERS ON THE DATES

INDICATED. THEY WERE SERVED ON THE 22ND WHICH WAS LAST FRIDAY. THEY CAME IN OUR OFFICE IN THE NOON MAIL.

AND I THINK I'VE SUFFICIENTLY STATED THE BASIS UNDER THE SINGER CASE.

AND MY OBJECTION IS NOTED.

IT'S BEEN FILED AND I THINK IT'S INAPPROPRIATE AT THIS TIME.

I DON'T THINK THE COURT HAS THE AUTHORITY AT THIS TIME ACTUALLY TO ENTER INTO THIS APPROVAL OF ALL THESE GOOD FAITH— IT IS A NUNC PRO TUNC ATTEMPT TO RETROACTIVELY APPLY THAT WHICH SHOULDN'T BE APPLIED PRESENTLY. NO AUTHORITY IN THE LAW FOR THIS PROCEDURE TO BE DONE.

IF THESE WANT TO BE APPLIED TO THE NEW COMING DEFENDANTS THERE IS A PROCEDURE FOR IT AND AS THE COURT OF APPEALS STATED IN THE SINGER CASE THERE IS ESSENTIALLY A THREE-STEP PROCEDURE TO BE FOLLOWED. IF THAT'S FOLLOWED THEN THESE DEFENDANTS THAT HAVE SETTLED HAVE THE RIGHT TO GET CONFIRMATION.

ABSENT THAT THERE IS A DEPRIVATION—ACTUALLY CONSTITUTIONAL PROPERTY RIGHT DEPRIVATION THAT RISES TO LEVEL OF UNITED STATES CONSTITUTION IF WE AREN'T ALLOWED TO EXERCISE OUR DISCOVERY RIGHTS.

THE COURT: DO YOU BELIEVE THAT IS TRUE?

MR. HARRISON: ABSOLUTELY. AFTER HAVING READ THE SINGER CASE AND U.S. CONSTITUTION.

THE COURT: OH, ALL RIGHT.

FOR MR. KENT. I WOULD LIKE TO HEAR FROM MR. KENT.

IS MR. KENT PRESENT?

THIS IS ON BEHALF OF JAMES LYNN MCNEIL.

MR. WAYSMAN: YES, YOUR HONOR. I AM WILLIAM WAYSMAN. I CAME ON BEHALF OF JAMES LYNN MCNEIL.

I WROTE THE OPPOSITION PAPERS.

THE MAIN THING I WOULD LIKE TO EMPHASIZE TO THE COURT IS I THINK THE STATUTE IN 77.6 REQUIRES A SPECIAL FORM OF SHORTENING TIME NOTICE. IT HAS ITS OWN REQUIREMENTS AND I NOTICE THAT THE REPLY FROM THE MOVING PARTIES ONLY REFERS TO OTHER CODE SECTIONS.

THIS HAS A SPECIFIC SHORTENING TIME PROVISION WHICH INDICATES IT CAN ONLY BE DONE IN ORDER TO AVOID OVERLAPPING WITH THE TRIAL DATE WHICH I UNDERSTAND IS NOT A PROBLEM HERE.

IN ADDITION TO MR. HARRISON'S COMMENTS THOSE ARE THE ONES I WOULD LIKE TO EMPHASIZE.

THE COURT: ALL RIGHT.

MR. BERTRAND: YES, YOUR HONOR. FIRST I WOULD LIKE TO NOTE FOR THE RECORD IT IS MY UNDERSTANDING COUNSEL FOR BOTH OBJECTING PARTIES WERE IN COURT LAST WEEK WHEN YOUR HONOR SET THIS HEARING WITH NO OBJECTION BEING MADE.

SECONDLY, WITH RESPECT TO SHORTENING TIME I BELIEVE LOCAL RULES DO PROVIDE YOUR HONOR HAS AUTHORITY TO DO SO. UNDER THE COORDINATION RULES I THINK YOUR HONOR LIKEWISE HAS AUTHORITY TO SHORTEN TIME.

AND IN VIEW OF THE LACK OF ANY OBJECTION TO THE PROCEDURE I—I DON'T THINK THEIR OBJECTION IS WELL TAKEN.

AND FINALLY, I WOULD LIKE TO NOTE WITH RESPECT TO THE— THE HEARINGS THAT WENT FORWARD BACK SOME TIME AGO WHEN THE MOTION

ORIGINALLY WENT ON YOUR HONOR HAD THE OPPORTUNITY PRIOR TO THAT TIME TO REVIEW THE MOTIONS FOR SUMMARY JUDGMENT.

AND HAD RECEIVED SUBSTANTIAL EVIDENTIARY MATERIALS WITH RESPECT TO THE CLAIMS THAT WERE AT ISSUE.

YOUR HONOR WAS LIKEWISE MADE AWARE OF THE MAGNITUDE OF THE CLAIMS AND IT WAS NO SECRET THERE WERE OTHER DEFENDANTS. THERE WERE OTHER DEFENDANTS NAMED IN ITEMS OF LITIGATION AND—AND WE BELIEVE, QUITE FRANKLY, THAT YOUR HONOR TOOK ALL THOSE FACTORS INTO CONSIDERATION IN MAKING DETERMINATION WHETHER THE AMOUNTS PAID IN SETTLEMENT BY THE VARIOUS DEFENDANTS WERE PROPORTIONAL TO THE TOTAL CLAIMS THAT WERE BEING ASSERTED IN LITIGATION.

THESE INDIVIDUALS HAVE COME FORWARD, SOME OF WHOM HAVE KNOWN ABOUT THE LITIGATION AS I READ IN THE DECLARATION OF MR. HARRISON, FOR SOME TIME. THEY HAD THE OPPORTUNITY TO LOOK AT DISCOVERY. THEY HAVE NOT URGED ANYTHING IN CONNECTION WITH THEIR PAPERS TO SAY, WELL, WE NEED TO INVESTIGATE THIS SPECIFIC FACT OR THAT OR WE THINK WE CAN SHOW THIS OR THAT. THERE HAS BEEN NO SHOWING WHATSOEVER THEY ARE GOING TO BE ABLE TO PRESENT ANYTHING. ON THAT BASIS WE BELIEVE THAT THE MOTION BY BANK OF THE WEST AND THE OTHER MOTIONS THAT HAVE BEEN FILED SHOULD BE GRANTED.

THANK YOU.

THE COURT: MR. JOHNSON.

MR. JOHNSTON: ALAN JOHNSTON FOR BEAR, STEARNS AND MICHAEL DOHERTY. I WOULD JOIN IN THE COMMENTS OF MR. BERTRAND WITH

RESPECT TO THE SETTLEMENT WITH BEAR, STEARNS.

WE'VE PRESENTED ALL THAT MATERIAL TO YOU BACK IN MAY.

WE PRESENTED IT TO YOU AGAIN.

I WOULD NOTE IN ADDITION TO THE FACT THAT THE PARTIES WHO ARE NOW OBJECTING IN ADDITION TO THE FACT THEY WERE IN COURT LAST WEEK AND DID NOT OBJECT TO THE HEARING BEING SET TODAY, THEY'VE ALSO HAD A WEEK—IF THEY WANTED TO CONDUCT SOME DISCOVERY, OR MAKE SOME KIND OF AN INVESTIGATION TO FIND OUT TO TRY TO SHOW THAT THESE SETTLEMENTS WERE NOT IN GOOD FAITH THEY HAVE MADE NO EFFORT TO DO SO IN THE COURSE OF THE LAST WEEK AND I THINK THAT GIVEN THE SCHEDULE FOR YOUR HONOR'S VACATION AND THE SCHEDULE WE ARE ALL OPERATING ON TO TRY TO GET THE SETTLEMENTS COMPLETED IT'S IMPORTANT WE GET A DECISION QUICKLY.

THE COURT: MR. COATS.

MR. COATS: THANK YOU, YOUR HONOR. WILLIAM COATS, FOR KMG MAIN HURDMAN.

YOUR HONOR, I WOULD JOIN IN THE PREVIOUS COMMENTS AND I WOULD ADD ONLY ONE THING. AS TO MR. MCNEIL HE WAS SERVED IN THIS CASE ON APRIL 10TH.

SIX WEEKS PRIOR TO THE ORIGINAL GOOD FAITH HEARING AND HE WAS ON THE SERVICE LIST AT THE TIME THAT THE MAY 18TH GOOD FAITH HEARING OCCURRED AND HE MADE NO OBJECTION AT THAT TIME AND HE WAS ALREADY A PARTY TO THE ACTION.

I HAVE BEEN UNABLE TO DETERMINE WHEN MR. RUSSO WAS ADDED TO THE CASE. I CAN'T SPEAK TO HIM. AS TO MR. MCNEIL HE WAS A PARTY TO THIS

ACTION AS TO MAY 18TH. THIS IS REALLY A SECOND OPPORTUNITY TO OBJECT IF HE SEES FIT TO DO SO.

THE COURT: MISS KOCH.

MS. KOCH: YOUR HONOR, I TOO—NANCY KOCH FOR LAWYER DEFENDANTS—I, TOO, WOULD ECHO COMMENTS MADE BY COUNSEL AND ADD IN DEFENDANTS MCNEIL'S PAPERS HE SUGGESTS HE RETAINS THE RIGHT DESPITE THE FINDING TO BRING CROSS CLAIM FOR WHOLE INDEMNITY.

I WOULD LIKE TO SAY THAT WILL BE AN ISSUE CONTESTED AT THE APPROPRIATE TIME AND NOT AN ISSUE THE COURT NEEDS TO REACH TODAY TO FIND THESE SETTLEMENTS WERE MADE IN GOOD FAITH.

THANK YOU.

MR. TALT: STEVE TALT ON BEHALF OF SECURITY PACIFIC NATIONAL BANK. I WOULD MERELY JOIN IN THE COMMENTS MADE BY DEFENDANTS FOR PURPOSES OF OUR MOTION FOR GOOD FAITH SETTLEMENT.

THE COURT: MR. COTCHETT.

MR. COTCHETT: YES, YOUR HONOR, ON BEHALF OF SETTLING PLAINTIFFS THAT I REPRESENT.

MR. HARRISON, WHO REPRESENTS MR. RUSSO HAS BEEN IN THIS CASE FOR AT LEAST THREE MONTHS THAT I KNOW, AND ON APRIL 27TH HE WROTE ME A LETTER TELLING ME THAT HE WAS IN THE CASE AND HE WOULD GLADLY ACCEPT ANYTHING.

I TALKED TO HIM IN COURT DURING THE TRIAL OF THIS PHASE.

I SPECIFICALLY DISCUSSED WITH HIM GOOD FAITH SETTLEMENTS AND WHAT WOULD HAPPEN DOWNSTREAM.

THAT HE NOW SAYS HE HAS NO NOTICE IS—AT LEAST ABSURD IN MY MIND.

I DID NOT RECEIVE THIS MORNING ANY PAPERS FROM MR. MCNEIL, ALTHOUGH WE'RE NOT SURE WHO IS REPRESENTING MR. MCNEIL.

THE ONLY TELEPHONE CALLS WE RECEIVED THIS WEEK WERE FROM TWO DIFFERENT LAWYERS, EACH OF WHICH STATING THAT THEY WANTED TO BE THE LEAD COUNSEL FOR THE DEFENSE AND THEY REPRESENTED MR. MCNEIL, ALTHOUGH WHEN WE ASKED WHERE THEIR ANSWERS WERE THEY SAID YOU WOULD HAVE TO TALK TO THE OTHER LAWYER BECAUSE HE IS ANSWERING FOR MR. MCNEIL, THAT IS HIS WINDOW TO WASH.

SO THE ONLY CONCERN OF THESE COUNSEL THIS WEEK WAS WHETHER THEY COULD COME TO COURT HERE, OPEN AN OFFICE IN SAN JOSE—I'M SURE YOU WILL HEAR MORE ABOUT THAT LATER, YOUR HONOR—AND BECOME LEAD COUNSEL. THAT WAS THEIR CONCERN THIS WEEK. THERE WAS NO REQUEST FOR DISCOVERY.

THERE WAS NO MENTION OF THE GOOD FAITH MOTION. THERE WAS NO MENTION OF ANYTHING EXCEPT COULD WE SUPPORT THEM FOR LEAD COUNSEL SO THEY COULD TAKE ON ALL OF THIS WORK.

THE COURT: WHAT FIRM IS THAT?

MR. COTCHETT: THAT WOULD BE THE SHEA & GOULD FIRM THAT CALLED US ASKING US TO—

MR. HARRISON: DON'T LOOK AT ME. I AM JEFF HARRISON.

MR. GREENFIELD: LARRY GREENFIELD FROM THE FIRM. I AM GLAD TO ADDRESS—

MR. COTCHETT: SHEA FIRM IS GOING TO OPEN A BIG OFFICE HERE WHO REPRESENT, I UNDERSTAND,

MR. MCNEIL, WHO IS OPPOSING THIS GOOD FAITH HEARING.

THE COURT: YES.

MR. COTCHETT: ALTHOUGH I HAVEN'T BEEN SERVED PAPERS.

MR. GREENFIELD: LARRY GREENFIELD.

MR. COTCHETT'S FIRM INVITED THE COURT TO CONSIDER APPOINTING ADDITIONAL COUNSEL. RESPONDING TO THE INVITATION WE STEPPED UP TO THE PLATE TO VOLUNTEER.

THE COURT: AND WRITE ME A LETTER SAYING YOU COULD NOT POSSIBLY COMPLETE DISCOVERY BEFORE A TRIAL DATE. I CAN'T APPOINT A FIRM TO COORDINATE DEFENSE IF THEY DON'T BELIEVE THE TRIAL CAN TAKE PLACE, WOULDN'T YOU AGREE?

MR. GREENFIELD: I BELIEVE WE ARE WILLING TO DO WHAT HAS TO BE DONE TO GET DISCOVERY DONE SO OUR CLIENTS ARE NOT JEOPARDIZED. I DON'T BELIEVE A TRIAL DATE IN OCTOBER IN A CASE WE JUST GOT SERVED 483 COMPLAINTS IN AND ARE MAKING OUR FIRST APPEARANCE SHOULD IN ANY WAY GET IN OUR WAY OF DOING OUR BEST JOB POSSIBLE TO DEFEND OUR CLIENTS—

THE COURT: I AGREE, YOU ARE ENTITLED TO THOSE VIEWS AND TO VIGOROUSLY URGE YOUR CLIENTS DEFENSE AND MY COMMENTS ARE NOT DIRECTED AT THAT POINT.

IT'S JUST THAT VIEW MIGHT BE INCONSISTENT WITH ACTING AS DEFENSE LIAISON, COUNSEL. DO YOU SEE?

YOU DON'T SEE THAT.

MR. GREENFIELD: I DON'T SEE THAT, YOUR HONOR.

THE COURT: THAT IS PERHAPS WHY WE MIGHT CHOOSE SOMEBODY ELSE.

MR. COTCHETT: I APOLOGIZE FOR RAISING THAT TANGENTIAL ISSUE. THAT IS MY FAULT.

THE CONVERSATION THIS WEEK HAS BEEN MORE IN TUNE WITH OTHER COLLATERAL MATTERS THAN IT WAS WITH THESE MOTION ALL OF WHICH WERE KNOWN TO THEM.

MR. GREENFIELD: WE RECEIVED THE MOTION FOR GOOD FAITH DETERMINATION YESTERDAY WHICH WAS ABOUT TWO WEEKS AFTER WE HAVE BEEN ABLE TO FILE ALL OUR ANSWERS TO THE COMPLAINTS IN THIS.

WHEN I RESERVE ON BEHALF OF DEFENDANT JEFF READ WHATEVER OBJECTIONS HE MAY HAVE IN THE ORDINARY COURSE BY STATUTE TO THAT GOOD FAITH DETERMINATION WE DO NOT BY NOT HAVING FILED AN OPPOSITION IN THE 24 HOURS SINCE RECEIVING THE MOTION CONSENT TO THAT MOTION AND I WANT TO KNOW THAT FOR THE RECORD.

THE COURT: ALL RIGHT. VERY GOOD.

MR. BLEARS—OR—

MR. BLEARS: YES, YOUR HONOR. FOR THE RECORD OUR MOTION WAS ALSO SERVED ON ALL PARTIES. I AM NOT SURE HOW THEY HAVE COULD HAVE RECEIVED IT YESTERDAY SINCE IT WAS SERVED TO ALL PARTIES LAST THURSDAY. OTHER THAN THAT I JOIN IN THE OTHER COMMENTS BY THE DEFENDANTS IN URGING OUR MOTION.

THE COURT: STATE YOUR NAME.

MR. BLEARS: NORMAN BLEARS REPRESENTING CERTAIN OF THE DIRECTORS.

THE COURT: THANK YOU.

MS. GRUEN JAN GRUEN REPRESENTING DE LA OSSA FROM CARTWRIGHT LAW FIRM AND WE, TOO, JOIN IN THE COMMENTS OF THE OTHER DEFENDANTS IN THIS MATTER.

MS. SAWYER: YOUR HONOR, KIMBERLY SAWYER ON BEHALF OF THE SPEER DEFENDANTS AND CONTINENTAL PARAGON CORPORATION.

I WOULD LIKE TO JOIN IN THE OBJECTIONS TO AN ENTRY OF THE ORDER APPROVING THE SETTLEMENTS IN GOOD FAITH AND IN ADDITION TO THOSE OBJECTIONS THAT HAVE ALREADY BEEN STATED OUR INABILITY TO ANALYZE OR HAVE TIME TO PUT AN INTELLECTUAL OBJECTION TO THE MOVING PAPERS HAS BEEN COMPOUNDED BY THE FACT WE HAVE BEEN UNABLE TO RECEIVE COPIES OF ALL THE SETTLEMENT AGREEMENTS THUS FAR.

I BELIEVE WE HAVE RECEIVED A SETTLEMENT AGREEMENT BY BANK OF THE WEST, AND I BELIEVE IT WAS THE LAWYER DEFENDANTS DID ATTACH ONE TO THEIR MOTION, BUT WITHOUT HAVING ALL OF THEM WE HAVE BEEN UNABLE TO DO ANY SORT OF INTELLECTUAL ANALYSIS OF THE GOOD FAITH NECESSARY—GOOD FAITH CHARACTER OF THE SETTLEMENTS.

THE COURT: MISS SAWYER, WILL YOU TELL ME HOW YOU WENT ABOUT GATHERING THE DOCUMENTS?

MS. SAWYER: WE—IT'S BEEN SEVERAL MONTHS AGO, YOUR HONOR. AND I WAS NOT THE PARTICIPATING ATTORNEY, BUT--

THE COURT: DID YOU NOT CALL DEFENSE COORDINATION COUNSEL AND ASK THEM FOR IT?

MS. SAWYER: I'M NOT SURE IF THAT CALL WAS MADE, YOUR HONOR.

WHAT WE DID DO WAS WE SIGNED AN ORDER. I BELIEVE THERE WAS AN ORDER OF THE COURT STATING THAT DIRECTED TO INTERESTED PARTIES THOSE WHO WERE INTERESTED TO RECEIVE COPIES OF SETTLEMENT AGREEMENTS COULD SIGN AN

ORDER ATTESTING THAT THEY WOULD KEEP THOSE SETTLEMENTS CONFIDENTIAL.

AND WE SIGNED SUCH AN ORDER AND SERVED IT ON ALL THE PARTIES THAT WERE INVOLVED AND WE RECEIVED NO RESPONSE BACK FROM THAT EXCEPT WE DIDN'T GET A COPY BACK FROM BANK OF THE WEST. THE COURT: SO YOU DON'T KNOW WHETHER THERE WAS AN INQUIRY PUT TO DEFENSE LIAISON—

MS. SAWYER: I'M SORRY. I DO NOT KNOW THAT FOR A FACT.

THE COURT: YOU DON'T KNOW THAT.

MS. SAWYER: I BELIEVE WE DID MAKE EFFORTS IN THAT AREA. I CAN'T SAY THERE WAS A SPECIFIC PHONE CALL MADE.

MR. MOODY: CRAIG MOODY FOR RAY WAHBA. I WAS THE RECIPIENT OF A REGISTERED LETTER ABOUT THREE MONTHS AGO FROM THEIR FIRM WHICH I BELIEVE WAS COPIED TO ALL COUNSEL INVOLVED IN THIS CASE ASKING FOR ALL THE SETTLEMENT DOCUMENTS. I RESPONDED I WAS NOT A SETTLING PARTY AND HAD NO SUCH OBLIGATION. BUT I THINK THEY DID MAKE THAT EFFORT.

THE COURT: OKAY. GOOD.

ALL RIGHT. MR. HARRISON.

MR. HARRISON: YES, IF I MAY ONE MORE MOMENT, YOUR HONOR.

A COUPLE POINTS I THINK SHOULD BE BROUGHT UP TO THE COURT. THERE'S NO NEED, YOUR HONOR, FOR ANYBODY TO OBJECT TO THE FACT THAT THERE HAD BEEN A SHORTENING TIME ORDER THAT MAY HAVE BEEN IN FACT ISSUED ON THE 20TH WHICH WAS THE LAST TIME A NUMBER OF LAWYERS WERE HERE.

I PERSONALLY WASN'T.

THE FACT OF THE MATTER IS THE STATUTE AND THE JUDICIAL COUNSEL COORDINATING RULES DO NOT SET UP A PROCEDURE NOR DOES THE LOCAL RULE ANY—ANY SANTA CLARA LOCAL RULE ESTABLISH A PROCEDURE FOR THE OVERRIDING OF 877. THAT'S NUMBER ONE.

NUMBER TWO, I JUST WANT THE RECORD TO BE CLEAR MY CLIENT ENTERED INTO THIS LITIGATION ON THE 10TH DAY OF JUNE, 1988, NOT THREE MONTHS AGO AS MR. COTCHETT HAD INDICATED.

I DID COME TO COURT DURING THE COURSE OF THE TRIAL AFTER SETTLEMENTS HAD BEEN REACHED INDICATING TO MR. COTCHETT AND MR. ANDERSON THEY COULD SERVE MY CLIENT THROUGH ME AND WOULDN'T HAVE TO BURDEN THEM, AND I ALSO WANTED TO DISCUSS WITH THEM INSURANCE AND GO OVER INSURANCE POLICIES.

AND THERE WAS NEVER ANY DISCUSSION AND I TAKE SOME UMBRAGE AT COUNSEL'S STATEMENT WE DISCUSSED THE GOOD FAITH SETTLEMENT. AT THE TIME I APPEARED AT THIS COURTHOUSE IT WAS A FAIT ACCOMPLI SO THOSE MATTERS HAVE BEEN SETTLED.

I DON'T KNOW WHAT ANYBODY'S REQUEST TO BE COORDINATING OR LIAISON OR LEAD COUNSEL HAS TO DO WITH THE ISSUE OF THE OBJECTION THIS MORNING, BUT LAST WEEK WHEN ALAN WALTERS OF MY OFFICE ASKED ABOUT DISCOVERY HIS HONOR INDICATED TO MR. WALTERS GO TO THE GENERAL ORDERS OF THE ORDERS OF COURT.

IF YOU RECALL THERE WAS A COLLOQUY BETWEEN MR. WALTERS AND MS. WEINER OF MR. COTCHETT'S OFFICE OVER THE FACT WE HAD NOT RECEIVED THE ORDERS.

AS OF TODAY WE HAVE STILL NOT, AND THERE ARE AT LEAST TWO FIRMS THAT DIDN'T GET THEM UNTIL YESTERDAY, DID NOT GET THESE ORDERS SERVED. WE FINALLY ARE HAVING THEM PICKED UP FROM OTHER CO-DEFENDANTS BUT THESE ALLEGATIONS THAT KEEP COMING OUT THAT PEOPLE ARE DOING THINGS AND PEOPLE ARE DOING THINGS, IT'S INACCURATE. THEY AREN'T BEING DONE. ORDERS ARE NOT BEING SERVED. THEY APPEAR IN THE COURT'S FILE BUT THEY ARE NOT IN FACT BEING SERVED.

IT'S ALMOST FROM THE OUTSIDE LOOKING IN AND HAVING JUST RECENTLY COME IN IT'S—THERE'S—THERE'S AN INCREDIBLE AMOUNT OF CONFUSION. WHEN IT COMES RIGHT DOWN TO IT THERE WAS NO ORDER ISSUED OUT.

MY ASSOCIATE MR. WALTER WAS NOT AWARE THE COURT, QUOTE, ISSUED AN ORDER, END QUOTE, ON THE 20TH THAT THERE WOULD BE A GOOD FAITH HEARING TODAY. WE FOUND WHEN WE GOT MAIL ON THE 22ND RECEIVED THIS STACK OF MAIL THAT, INDEED, THERE WAS A HEARING TO BE HELD TODAY.

ALL THAT NOTWITHSTANDING, YOUR HONOR, THE FACT OF THE MATTER IS THAT THE RIGHTS OF THE INDIVIDUALS TO OBJECT CAN'T BE ABROGATED BY THIS PROCEDURE, THIS NUNC PRO TUNC PROCEDURE. THERE IS A STATUTORY AND A CASE LAW PROCEDURE THAT HAS BEEN ESTABLISHED AND IT'S ONLY GOING TO DRAW THINGS OUT LONGER AND NOT SHORTEN IT IF PEOPLE CAN'T GO IN QUICKLY AND DO WHAT THEY HAVE TO DO. I'VE—

THE COURT: THANK YOU.

MR. HARRISON: YEA, YOU BET.

MR. MCCABE: MIKE MCCABE REPRESENTING PAUL WEHNER AND ALTHOUGH THE MOTION WAS

ONLY BROUGHT UP AS TO BANK OF THE WEST I, TOO, AM A MOVING PARTY ON BEHALF OF MR. WEHNER AND WOULD JOIN IN THE COMMENTS OF THE OTHER MOVING DEFENDANTS.

THANK YOU.

MR. STEPHENSON: GOOD MORNING, ROY STEPHENSON REPRESENTING PAUL C. KNAUFF AND ALSO I WOULD LIKE TO JOIN IN THE MOTION.

THE COURT: CALENDAR ITEMS 1, 2, 3, 4, 5, 6 ARE GRANTED. THE COURT ADOPTS THE STATEMENT OF REASONS THAT IT USED AT THE EARLIER HEARING FOR CONFIRMATION OF GOOD FAITH SETTLEMENT.

ITEM 7 IS ALSO GRANTED ON THE SAME BASIS.

I DON'T SEE MR. STONER. IS HE HERE?

MR. TALT: NO, YOUR HONOR, MR. TALT FROM—

THE COURT: IT IS ALMOST NOT A HEARING WITHOUT MR. STONER. HE MUST BE ON VACATION OR HIS FAX MACHINE MUST BE BROKEN.

MR. TALT: I WILL BE SURE TO RELATE THOSE COMMENTS, YOUR HONOR.

MR. STONER IS OUT OF TOWN.

MR. TALT: STEPHEN TALT, T-A-L-T.

THE COURT: WELL, MR. TALT, I'LL GRANT YOUR MOTION.

MR. TALT: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT.

ALL RIGHT. CALL THE STATUS CONFERENCE CALENDAR.

THE CLERK: WE'RE GOING TO CALL THE STATUS CONFERENCE CALENDAR.

MS. WEINER: YOUR HONOR, IF IT WOULD ASSIST THE COURT MAYBE WE SHOULD START WITH NUMBER 43 AS THE ONES BEFORE THAT WERE REPRESENTED BY COTCHETT AND WILSON AND TAKEN OFF THE CALENDAR AND THOSE ACTIONS, HAVE

BEEN, ARE PART OF THE TEST ACTIONS THAT WOULD BE GOING TO TRIAL IN OCTOBER.

THE COURT: ALL RIGHT. ANY OBJECTION TO THE REQUEST THAT ITEMS 1 THROUGH 42—1 THROUGH 42 BE OFF CALENDAR?

MR. HARRISON: WE ONLY HAVE ONE—

THE COURT: IS YOUR LAST CASE LAMPROS VERSUS KMG?

MR. HARRISON: FOUR ZERO—YOUR HONOR, SHOWS FOUR ZERO.

THE COURT: AND YOU SAY YOUR CALENDAR GOES THROUGH ONLY 40?

MR. HARRISON: AFFIRMATIVE. THAT IS THE COPY OF THE COURT DOCUMENTS.

MS. WEINER: HE IS LOOKING AT THE NOTICE, NOT TODAY'S SCHEDULE WHICH IS AVAILABLE FROM MR. FOSTER.

THE COURT: THERE HAVE BEEN TWO MAILINGS FROM THE COURT. THE SECOND MAILING OF THE CALENDAR HAS ITEMS THROUGH 61 BEING BRADSHAW VERSUS BAROVSKY.

MS. WEINER: YOUR HONOR, SOME OF THE ITEMS 1 THROUGH 42 ARE NOT COCHETTI, NOLSON AND KLEIN'S, BUT REPEATED IN THE COURT'S CALENDAR FOR THE STATUS CONFERENCE STARTING WITH LINE 43.

THE COURT: ALL RIGHT. LINES—LINES 1 THROUGH 40 ARE OFF CALENDAR.

SOME OF YOU DO NOT HAVE THE CALENDAR THROUGH 61; IS THAT CORRECT?

MR. HARRISON: CORRECT, YOUR HONOR.

WAS THIS MAILED—

THE CLERK: YOUR HONOR—

THE COURT: YES.

(CONFERENCE BETWEEN CLERK AND THE COURT NOT REPORTED.)

MR. WALTER: YOUR HONOR, AS FAR AS WE CAN SAY NO DEFENSE COUNSEL—

THE COURT: LET ME CALL ON YOU. IF YOU STEP UP TO THESE MIKES I WILL BE—

MR. WALTER: ALAN WALTER.

THE COURT: IF YOU SPEAK OUT FROM THE FLOOR OF THE COURT OR IF YOU WALK UP WITHOUT ME HAVING A CHANCE TO RECOGNIZE YOU IT BECOMES VERY DIFFICULT TO HANDLE THE COURTROOM.

I WOULD PREFER YOU NOT DO THAT IN THE FUTURE.

ALL RIGHT. WE'RE GOING TO TAKE—WE'RE GOING TO MOVE ON ACTUALLY.

I'M GOING TO ASK DENNIS TO MAKE COPIES OF THE LAST PART OF THAT CALENDAR.

SO YOU'LL MAKE COPIES OF PAGES 11, 12, 13 THROUGH 16.

11 THROUGH 16.

MAKE 20 OF THEM.

DID ANYONE RECEIVE A COPY OF THE CALENDAR WITH ALL PAGES 1 THROUGH 16?

MR. DICKEY, YOU RECEIVED IT?

MR. DICKEY: YOUR HONOR, I PICKED THIS UP THIS MORNING FROM THE PODIUM. I THINK THAT'S WHAT YOU ARE REFERRING TO. I DON'T BELIEVE IT WAS MAILED TO COUNSEL.

THE COURT: I SEE.

MR. DICKEY: IT APPEARS TO BE A COMBINATION OF TWO STATUS CONFERENCE ORDERS THAT WERE SERVED BY THE COURT.

ONE WAS THE ORIGINAL LIST SENT OUT SOME WEEKS AGO.

THE SECOND WAS A SHORTER LIST I JUST RECEIVED IN MY OFFICE YESTERDAY.

THE COURT: MR. MOODY, YOU DIDN'T GET A COPY.

MR. MOODY: WE RECEIVED BOTH THESE THINGS. THE ONLY PROBLEMS WITH THE 16 PAGES IS THAT ADDED LINES 41 AND 42 AND ARE CASES THAT ARE DUPLICATED FURTHER ON IN THAT LIST, BOTH OF WHICH COME FROM THE SECOND CALENDAR THAT WAS MAILED FOR COUNSEL.

IF YOU TAKE THE FIRST CALENDAR AND SECOND CALENDAR MAILED TO COUNSEL BY THE COURT YOU HAVE ALL THE CASES THAT ARE ON THE 16 PAGE LIST.

THE COURT: SO YOU RECEIVED IT.

MR. MOODY: YES.

THE COURT: ALL RIGHT.

WE'LL TAKE A RECESS.

JOHN, WHAT ELSE DO WE HAVE?

ALL RIGHT. CALL THAT.

THE CLERK: INDIVIDUAL PLAINTIFFS' MOTION REGARDING DESIGNATION OF TRIAL PLAINTIFFS FOR TRIALS COMMENCING OCTOBER 3RD, 1988.

MR. COTCHETT: WE FILED WITH THE COURT A MEMORANDUM. WE RECEIVED NO OPPOSITION, YOUR HONOR.

THE COURT: ANY OPPOSITION TO THE DESIGNATION?

MR. COTCHETT: YOUR HONOR, JONATHAN DICKEY FOR SUTRO AND COMPANY. I AM NOT OPPOSING MR. COTCHETT'S MOTION. I SIMPLY WANT TO KNOW NOTE FOR THE RECORD THAT THE T.E., K.M.G. PLAINTIFFS AND SUTRO AND COMPANY HAVE ENTERED INTO AN AGREEMENT IN PRINCIPLE TO SETTLE THE CLAIMS AGAINST MY CLIENT. ON THAT BASIS WE ARE NOT GOING TO BE INVOLVED IN THE OCTOBER 1 TRIALS.

THE COURT: WELL, THAT'S GOOD NEWS THEN, MR. DICKEY.

MR. DICKEY: I THINK.

THE COURT: THAT—ANY OPPOSITION?

MR. IRVINE: YOUR HONOR, PERRY IRVINE FOR ALBERT J. GREEN.

YOUR HONOR, ACCORDING TO THE FILE STAMP OF MY OFFICE WE RECEIVED THIS YESTERDAY.

WE HAVE NOT HAD ANY OPPORTUNITY, AND I SUSPECT A NUMBER OF OTHER PEOPLE WHO ARE SIMILARLY SITUATED TO MYSELF, HAVE NOT HAD ANY OPPORTUNITY TO ONE, EVEN GET A CHANCE TO LOOK AT THESE PARTICULAR PLAINTIFFS TO MAKE ANY SUGGESTIONS WITH RESPECT TO WHETHER OR NOT THERE MIGHT BE OTHER APPROPRIATE CASES TO BE HEARD, WHETHER THERE SHOULD BE ADDITIONAL CASES, WHETHER THESE PARTICULAR CASES ARE APPROPRIATE.

I DO NOTE IN READING THIS OVER MR. COTCHETT INDICATES SOME OF THESE PEOPLE HAVE HAD THEIR DEPOSITIONS TAKEN.

I DON'T THINK MYSELF—I KNOW I HAVE NOT ATTENDED THOSE DEPOSITIONS. I HAD NO INTEREST IN ATTENDING THOSE DEPOSITIONS SINCE MY CLIENT WAS NOT A PARTY TO ANY OF THOSE CASES.

I—I SUBMIT THERE ARE PROBABLY A NUMBER OF OTHER PEOPLE, OTHER DEFENDANTS RECENTLY ADDED WHO HAVE NOT HAD THAT OPPORTUNITY. FOR US TO SAY THERE IS NO OPPOSITION TO THIS PARTICULAR SET OF PLAINTIFFS WOULD NOT BE FAIR.

I DON'T THINK WE HAVE HAD AN OPPORTUNITY TO EVEN—ANY NOTICE WHATSOEVER THIS WAS EVEN GOING TO BE CONSIDERED UNTIL I RECEIVED IT YESTERDAY.

THE COURT: ALL RIGHT.

MR. COTCHETT: SO WE ARE CLEAR HOW THIS CAME ABOUT THIS COURT ORDERED ALL PARTIES FILE ON MONDAY AND SERVE ON MONDAY A DOCUMENT REQUIRING WHO THEY THOUGHT SHOULD GO TO COURT. JUST SO THAT WE ARE CLEAR SO MR. IRVINE, I SUBMIT, HE RECEIVED IN THE NORMAL COURSE OF THE MAIL, TUESDAY, HE IS VERY FORTUNATE HE GETS ONE DAY MAIL, HE RECEIVED OUR NOTICE. WE HAVE NO NOTICE FROM ANYBODY ABOUT ANY ADDITIONAL PLAINTIFFS THEY DESIRE TO GO TO COURT.

WE JUST FOLLOWED THE COURT'S RULE AS YOU ORDERED.

FILE ON MONDAY, SERVE ON MONDAY.

THE COURT: AS I RECALL THE ONLY OTHER PARTY WHO HAD AN INTEREST IN DESIGNATING PLAINTIFFS WAS MR. DICKEY, AS I RECALL THE LAST HEARING.

ISN'T THAT CORRECT?

MR. DICKEY: YOUR HONOR, I AM THE ONLY PERSON WHO MENTIONED THE ISSUE AT OUR LAST STATUS CONFERENCE.

THE COURT: I THINK THAT'S RIGHT. WELL, I THINK WHAT WE HAVE LEARNED IS THAT—THAT THIS LIST IS THE ONLY LIST THAT HAS BEEN SUBMITTED.

I THINK WE CAN PUT IT OFF A WEEK, LET YOU HAVE A LOOK AT THESE PLAINTIFFS AND WE'LL PUT IT BACK ON CALENDAR NEXT WEEK.

YOU CAN SAY WHAT YOU WANT ABOUT THE PARTIES.

I'M NOT GOING TO EXTEND THE DATE FOR DESIGNATING PLAINTIFFS. IF YOU HAD AN INTEREST IN DOING IT YOU SHOULD HAVE DONE IT.

THE COURT: WE HAVE—MY CLERK REMINDS ME WE DO NOT HAVE A CALENDAR SET NEXT WEEK.

IS YOURS THE ONLY OBJECTION, MR. IRVINE?

MR. GREENFIELD: YOUR HONOR, LARRY GREENFIELD OF SHEA, GOULD FIRM. I AM NOT SURE WHAT EXACTLY IS BEING ACCOMPLISHED BY THIS. IS THIS MERELY A PROPOSED PLAINTIFFS TO SET PROPOSED TRIAL, IS THIS A MOTION TO SET A TRIAL. WE WOULD OBJECT IF THERE IS A MOTION TO SET AN EARLY TRIAL. AS FAR AS DESIGNATION OF PLAINTIFFS WHO WOULD BE ELIGIBLE I WOULD HAVE TO WAIT TO SEE THAT BEFORE I COULD EVEN STATE AN OBJECTION.

THE COURT: YES.

COUNSEL?

MR. WALTER: ALAN WALTER FOR STEPHEN J. RUSSO. WE WOULD LIKE TO JOIN IN THE OBJECTIONS OF MR. IRVINE AND SHEA AND GOULD AND ALSO FOR THE RECORD I WAS HERE, INDEED, LAST WEEK AND I MADE NUMEROUS COMMENTS UPON OUR INABILITY TO PERFORM NECESSARY DISCOVERY TO MAKE ANY INTELLIGENT DECISION ABOUT ANY OF THESE MATTERS.

I KNOW IT'S BEEN STATED OVER AND OVER TODAY WE HAVE HAD A WHOLE WEEK TO DECIDE ABOUT DISCOVERY AND GOOD FAITH SETTLEMENTS AND MAKE ALL KINDS OF IMPORTANT DECISIONS BUT, YOUR HONOR, I WOULD JUST LIKE TO REITERATE MY STATEMENTS OF LAST WEEK WE GOT INTO THIS CASE ON JUNE 10TH AND WE—WE HAVE NO ABILITY TO MAKE ANY KIND OF DECISION ABOUT ANY OF THESE MATTERS IN ANY WAY THAT RELATES TO OUR CLIENT.

THE COURT: ALL RIGHT. I SAID THAT I WAS GOING TO SET THIS FOR HEARING. I'M NOT.

I AM GOING TO GIVE YOU AN OPPORTUNITY TO FILE WRITTEN OBJECTIONS.

AND THEY MUST BE FILED AUGUST 3RD AT 5:00 O'CLOCK. AND AT THAT TIME THE MATTER WILL BE SUBMITTED.

MR. WALTER: ALAN WALTER FOR STEPHEN RUSSO.

SO THIS ORDER IS CLEAR THESE WILL BE WRITTEN OBJECTIONS TO THE ENTIRE PROCEDURE OF SETTING PLAINTIFFS' TRIALS, OR PARTICULAR TRIALS OR OBJECTIONS TO WHAT?

THE COURT: WELL, PERHAPS YOU CAN TALK TO OTHER COUNSEL AND SORT THAT OUT. I THOUGHT MY ORDER WAS CLEAR ENOUGH.

MR. WALTER: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. CALL THE NEXT MATTER.

ALL RIGHT. WE WILL BE IN RECESS.

I WOULD LIKE TO SEE MR. WOODLAND, MR. JOHNSTON, PLAINTIFFS' COUNSEL MCMANIS IN CHAMBERS.

(WHEREUPON, THERE WAS A BRIEF RECESS.)

THE COURT: START WITH NUMBER 41.

THE CLERK: NUMBER HAD 41. WEDBUSH, NOBLE, COOKE, INC. VERSUS BENJAMIN FOSTER.

THE COURT: ANY APPEARANCE FOR WEDBUSH, NOBLE?

NO APPEARANCE.

MR. RUBY: YOUR HONOR, IF THE COURT PLEASE, ALAN RUBY MAKING A SPECIAL APPEARANCE FOR BENJAMIN FOSTER IN THIS CASE. THIS WAS CONTINUED BECAUSE WE HAD HOPED TO BE ABLE TO ANNOUNCE A SETTLEMENT IN THIS CASE.

MR. SUDER WHO REPRESENTS WEDBUSH AND I HAVE TRIED TO CALL ANY NUMBER OF TIMES.

MAY I RESPECTFULLY SUGGEST—FIRST OF ALL, IT IS MY BELIEF THIS CASE WILL BE—WILL PROBABLY BE ARBITRATED MAYBE SUBJECT TO MANDATORY

ARBITRATION AS IS NUMBER 42, THE MORGAN—WELL, KMG IS A PARTY THERE—I SHOULDN'T SAY THERE—AS TO NUMBER 41 MAY BE SUBJECT TO MANDATORY ARBITRATION.

AS TO THE PHONE MESSAGES TRADED BACK AND FORTH THERE IS A GOOD LIKELIHOOD THIS CASE WILL BE SETTLED.

I WOULD RESPECTFULLY REQUEST THE COURT MAY CONSIDER PUTTING IT ON FOR SEPTEMBER FOR LACK OF PROSECUTION MOTION WHICH WILL FOCUS THE ATTENTION OF EVERYONE. I WILL RENEW MY EFFORTS TO CONTACT MR. SUDER AND I AM SURE HE WILL DO LIKEWISE AND HOPEFULLY WE WILL SOLVE IT BY THAT TIME.

THE COURT: WE WILL PUT IT ON OUR SEPTEMBER DISMISSAL CALENDAR AND SEND THE APPROPRIATE NOTICE, MR. FOSTER.

THE CLERK: RIGHT.

THE COURT: 42.

THE CLERK: SAME ORDER OR—

THE COURT: KMG MAIN HURDMAN IS A DEFENDANT IN THIS CASE NUMBER 42, MORGAN, OLMSTEAD VERSUS KMG.

MR. COATS: YOUR HONOR, WILLIAMS COATS FOR GIBSON, DUNN AND CRUTCHER.

AS FAR AS I KNOW WE HAVE NEVER BEEN SERVED IN THIS CASE. IT'S—IT IS ON YOUR LIST BUT NOT ONE WE KNOW ANYTHING ABOUT.

THE COURT: WE ARE GOING TO SET IT FOR DISMISSAL SAME TIME AS NUMBER 41.

THE CLERK: NUMBER 43, ROLLINS, BURDICK, HUNTER VERSUS KMG.

THE COURT: ANY APPEARANCE FOR ROLLINS, BURDICK, HUNTER?

THERE IS NO APPEARANCE. THIS CASE WILL BE SET FOR MANDATORY DISMISSAL ON OUR SEPTEMBER CALENDAR.

THE CLERK: NUMBER 44. WEB MANUFACTURING VERSUS KOUNS. I HAD A PHONE CALL FROM THE LAWYER FOR THE PLAINTIFF—

THE COURT: WHO IS THAT ATTORNEY?

THE CLERK: IT'S JANICE MEGLAVICH CALLED ME—MR. MOODY IS ALSO—

THE COURT: MR. MOODY.

MR. MOODY: WELL, YOU KNOW, WE ARE TRYING TO FIND OUT IF WE ARE IN SOME OF THESE CASES WE DON'T HAVE RECORD OF. IN THE COURSE OF THAT SOMEBODY IN OUR OFFICE SPOKE TO A MIKE GEONELLI IN MODESTO AND THEY DIDN'T KNOW ANYTHING ABOUT IT.

BUT THEY WERE THE COUNSEL FOR PLAINTIFFS. THAT'S WHERE IT ENDED.

THE COURT: I SEE. THIS IS THE STANISLAUS COUNTY CASE.

MS. KOCH: NANCY KOCH. WE HAVE HAD NO CONTACT FROM THE PLAINTIFFS IN THIS MATTER.

THE COURT: WE WILL SET IT FOR DISMISSAL ON OUR SEPTEMBER CALENDAR.

MS. KOCH: THANK YOU.

THE CLERK: NUMBER 45, BARRETT VERSUS STERN MANAGEMENT ASSOCIATES.

THE COURT: ANY APPEARANCE FOR BARRETT?

SET IT FOR MANDATORY DISMISSAL ON THE SEPTEMBER CALENDAR.

THE CLERK: NUMBER 46, DILL, JUNIOR, VERSUS STERN MANAGEMENT ASSOCIATES.

MR. JOHNSON: YOUR HONOR, I'M TERRY JOHNSON APPEARING ON BEHALF OF THE PLAINTIFF—ACTUALLY THE CROSS COMPLAINANT IN THIS MATTER.

FRANK DILL, JUNIOR

YOUR HONOR, THE WAY THIS IS LISTED ON THE DOCKET IS ONLY PART OF THE LARGER CASE.

THE CAPTION THAT YOU HAVE DILL VERSUS STERN MANAGEMENT ASSOCIATES IS A THIRD PARTY COMPLAINT THAT WAS FILED IN CONNECTION WITH A CASE THAT'S KNOWN AS DILL VERSUS F.D. ORLANDO ASSOCIATES.

IT IS A PIECE OF LITIGATION THAT AROSE OUT OF ONE OF THE LIMITED PARTNERSHIPS TE PUT TOGETHER AND SPONSORED.

THE COURT: IS DILL VERSUS ORLANDO COORDINATED?

MR. JOHNSON: MY UNDERSTANDING IS WHEN WE FILED THE THIRD PARTY COMPLAINT ON THIS DOCKET AN ORDER WAS ENTERED BRINGING THE ENTIRE PROCEEDING INTO THE COORDINATED ACTION ALTHOUGH I HAVE NEVER SEEN A FORMAL ORDER. I WAS INFORMED OF THAT BY MR. STERN'S COUNSEL.

THE COURT: JOHN, MAKE A NOTE THIS IS A COMPANION TO DILL VERSUS ORLANDO—

MR. JOHNSON: F.D. ORLANDO AVENUE ASSOCIATES, I SAY SAME CASE NUMBER.

THE COURT: F.D. MINING, FRANK DILL ORLANDO?

MR. JOHNSON: THAT IS WHERE IT CAME FROM.

THE COURT: YES. I KNOW THE PATTERN.

WHAT DO YOU WANT TO DO WITH THIS CASE?

MR. JOHNSON: WELL, THE GIST OF THIS CASE AT THE MOMENT, YOUR HONOR, IS MR. DILL IS BEING SUED BY LIMITED PARTNERS. THIS IS ONE WHERE I CONSENTED AT THE REQUEST OF MR. STERN AND MR. BAYLSON TO BECOME A NOMINAL GENERAL PARTNER. HE IS BEING SUED BY LIMITED PARTNERS AND WE ARE REPRESENTING HIM IN THAT

AND FILED A THIRD PARTY COMPLAINT FOR INDEMNIFICATION IN THE EVENT THERE WAS ANY LIABILITY FOUND.

THERE IS—THE BALL IS IN THE COURT OF PLAINTIFFS' COUNSEL WHO I DON'T BELIEVE IS HERE TODAY.

THAT IS PLAINTIFFS' COUNSEL, BOB EPSTEIN OF SAN FRANCISCO—BECAUSE OF THE WAY THE CASE IS STRUCTURED—ACTUALLY DEFENDANT'S COUNSEL, BUT THAT'S—FOR ALL PRACTICAL PURPOSES HE IS THE PLAINTIFF.

HE INTENDS TO KEEP PURSUING THE CASE AS FAR AS I KNOW AND HAS TOLD ME HE IS GOING TO MAKE A MOTION TO SEVER THE WHOLE THING OUT FROM THE COORDINATED PROCEEDING.

AT THE MOMENT THAT'S ALL I KNOW ABOUT HIS INTENTIONS.

(DISCUSSION BETWEEN COURT AND CLERK NOT REPORTED.)

THE COURT: MR. JOHNSON, HAVE YOU STARTED DISCOVERY.

MR. JOHNSON: THE DEPOSITION OF MY CLIENT HAS BEEN TAKEN AND OTHER THAN THAT THERE HAS BEEN NO REAL DISCOVERY BY EITHER SIDE.

THE COURT: WELL, ARE YOU READY TO GO TO TRIAL?

MR. JOHNSON: WELL, YOUR HONOR, I THINK THAT THE—THE ACTION BY THE LIMITED PARTNERS AGAINST MR. DILL IS ONE MATTER AND THE THIRD PARTY COMPLAINT FOR INDEMNIFICATION AND CONTRIBUTION IS ANOTHER MATTER.

THAT ONE I THINK WOULD BE APPROPRIATELY TRIED IN CONJUNCTION WITH MR. DILL'S CLAIMS IN HIS OWN LAWSUIT AGAINST TECHNICAL EQUITIES DEFENDANTS. MOST OF THEM ARE IN THE COURTROOM.

THAT ONE YOU SET DOWN LAST WEEK FOR FURTHER STATUS CONFERENCE IN APRIL.

THE COURT: IN MARCH?

MR. JOHNSON: APRIL. AND IT IS GOING TO BE OUR POSITION IF MR. EPSTEIN DOES FILE A MOTION TO SEVER IT IS GOING TO BE OUR POSITION THE WHOLE THING IS TIED UP PART AND PARCEL WITH THAT LAWSUIT AND TO BE PUT ON THE SAME SCHEDULE.

THE COURT: ALL RIGHT. WHAT IS THE NAME OF THE CASE I SET IN APRIL?

MR. JOHNSON: DWYER VERSUS STERN MANAGEMENT ASSOCIATES.

THE COURT: DWYER?

MR. JOHNSON: D-W-Y-E-R.

THE COURT: I AM GOING TO SET THIS FOR STATUS ON THE APRIL 1989 DATE.

THE CLERK: APRIL 5TH.

THE COURT: APRIL 5TH

ALL RIGHT. VERY GOOD.

MR. JOHNSON: THANK YOU, YOUR HONOR.

THE CLERK: NUMBER 47, LUTTRULL VERSUS STERN.

MR. RASCH-CHABOT: GOOD MORNING, YOUR HONOR. JOE RASCH-CHABOT FOR HARRY STERN AND STERN MANAGEMENT ASSOCIATES.

PLAINTIFF'S COUNSEL CHUCK GREENE WAS JUST HERE. HE HAD TO LEAVE FOR ANOTHER HEARING. I INDICATED I WOULD BE WILLING TO STIPULATE TO SENDING IT TO ARBITRATION.

IT IS A—HE TELLS ME IT IS A $13,000 NOTE CASE.

THE COURT: $13,000 NOTE CASE?

MR. RASCH-CHABOT: (MOVES HEAD UP AND DOWN.)

THE COURT: ALL RIGHT. THE MATTER IS REFERRED TO ARBITRATION.

MR. RASCH-CHABOT: THANK YOU.

THE CLERK: NUMBER 48, NELSON PHYSICAL THERAPY, INC. VERSUS STERN MANAGEMENT ASSOCIATES.

THE COURT: ANY APPEARANCE FOR NELSON?

MR. WEINER: YOUR HONOR MARTIN WEINER. WE'RE APPEARING ON BEHALF OF DAVE NICHOLAS AND MANAGEMENT GROUP BEING NAMED AS DEFENDANTS. THIS HAS BEEN RECENTLY ADDED ONTO THE COORDINATED ACTION.

THE COURT: DAVID NICHOLAS AND.

MR. WEINER: MARLBOROUGH MANAGEMENT.

THE COURT: THEY ARE DEFENDANTS?

MR. WEINER: YES.

THE COURT: WHO IS HERE FOR NELSON?

WHAT'S THIS CASE ABOUT?

MR. WEINER: NELSON PHYSICAL THERAPY IS SUING ON A STERN MANAGEMENT NOTE.

THE COURT: IT IS A NOTE CASE?

WEINER: IT'S A NOTE CASE, BUT AS THERE IS NO APPEARANCE PERHAPS THIS SHOULD BE PUT ON THE SEPTEMBER CALENDAR.

THE COURT: I THINK SO. WE WILL PUT IT ON THE DISMISSAL CALENDAR.

WEINER: THANK YOU, YOUR HONOR.

THE COURT: SEPTEMBER DISMISSAL CALENDAR.

THE CLERK: NUMBER 49. BART JENKINS.

THE COURT: WE DON'T KNOW WHO THE DEFENDANT IS.

ANYBODY ON BEHALF OF BART JENKINS?

ANYBODY KNOW ANYTHING ABOUT THIS CASE?

MR. RASCH-CHABOT: YOUR HONOR—

THE COURT: NUMBER M.T. STANDING FOR—

THE CLERK: MUNI COURT.

MR. RASCH-CHABOT: THIS IS—JOE RASCH-CHABOT FOR HARRY STERN, STERN MANAGEMENT ASSOCIATES.

THIS IS A SMALL CLAIMS CASE.

THE COURT: SMALL CLAIMS.

MR. RASCH-CHABOT: $1500 NOTE CASE.

THE LAST I HEARD FROM MR. JENKINS HE WAS GOING TO TRY TO ALIGN HIMSELF WITH THE CLASS PLAINTIFFS IN FEDERAL COURT.

THE COURT: I'LL HEAR HIS SMALL CLAIM.

MR. RASCH-CHABOT: IT'S—

THE COURT: IT IS CERTAINLY A LOT EASIER THAN TAKING IT TO FEDERAL COURT.

YOU'VE TALKED TO MR. JENKINS?

MR. RASCH-CHABOT: YES, I HAVE.

THE COURT: TELL HIM TO CALL THE CLERK AND SET THE SMALL CLAIMS MATTER AND WE'LL TRY IT.

MR. RASCH-CHABOT: THANK YOU.

YOUR HONOR, ACTUALLY IF I MAY SUGGEST I THINK— OBVIOUSLY IT IS UP TO MR. JENKINS BUT I THINK HE MAY BE BETTER OFF ALIGNING HIMSELF WITH THE CLASS.

THE COURT: YOU THINK SO?

MR. RASCH-CHABOT: GIVEN THAT THE ONLY DEFENDANT IS STERN MANAGEMENT ASSOCIATES.

THE COURT: HAVE YOU TALKED SETTLEMENT WITH THIS MAN?

MR. RASCH-CHABOT: NO, I HAVE NOT TALKED SETTLEMENT.

THE COURT: YOU MAY BE ABLE TO OFFER HIM EVERYTHING HE WOULD BE ABLE TO GET IN COURT.

MR. RASCH-CHABOT: I—I PROBABLY WOULD BE WILLING TO DO THAT.

THE COURT: WOULD YOU DO THAT?

MR. RASCH-CHABOT: I THINK I WILL DO THAT.

THE COURT: GOOD. ALL RIGHT.

WE ARE GOING TO SET IT FOR DISMISSAL ON SEPTEMBER.

THE CLERK: OKAY.

NUMBER 50 AND 51 WE HAVE ALREADY COVERED.

52, SECURITY PACIFIC NATIONAL BANK VERSUS STERN.

MR. TALT: STEVE TALT ON BEHALF OF SECURITY PACIFIC NATIONAL BANK.

YOUR HONOR, THIS CASE IS A NOTE CASE.

THE COURT: HOW MUCH IS THE NOTE?

MR. RASCH-CHABOT: THE PRECISE NUMBERS I DON'T RECALL/ ACTUALLY—

MR. RASCH-CHABOT: MAYBE THREE NOTES, WORTH $300,000.

THE COURT: I'LL SEND IT TO ARBITRATION.

THE CLERK: NUMBER 53. SECURITY PACIFIC NATIONAL BANK VERSUS FUNNELL.

MR. TALT: STEVE TALT ON BEHALF OF SECURITY PACIFIC NATIONAL BANK. AS I UNDERSTAND THIS MATTER HAS BEEN SETTLED.

MR. RUBY: YES, ALAN RUBY FOR THE DEFENDANT. 53, 54, 55 AND 56 I REPRESENT RESPECTIVELY FUNNELL, DRYSDALE, ROBERTS AND PFEFFERBAUM AND THEY HAVE BEEN SETTLED.

MR. TALT: YES, THAT'S CORRECT.

THE CLERK: OKAY. NUMBER 57, SECURITY PACIFIC NATIONAL BANK VERSUS HOLLINGSWORTH.

MR. TALT: THIS MATTER, TOO, HAS BEEN SETTLED.

THE COURT: SETTLED.

ALL RIGHT. NUMBER 57 IS SETTLED.

THE CLERK: AND SECURITY PACIFIC NATIONAL BANK VERSUS PERKINS.

MR. TALT: YOUR HONOR, THIS IS ALSO A NOTE CASE BUT THIS MATTER HAS NOT BEEN SETTLED.

MY INSTRUCTIONS IT HAS NOT BEEN SETTLED.

MR. COTCHETT: MY INFORMATION IS IT HAS BEEN SETTLED.

THE COURT: I WILL MAKE AN ORDER SENDING IT TO ARBITRATION.

I WILL ASK THE CLERK TO WAIT THREE WEEKS BEFORE SENDING THE NOTICE OUT.

MR. COTCHETT: THANK YOU.

THE CLERK: 59, SECURITY PACIFIC NATIONAL BANK VERSUS KMG MAIN HURDMAN.

MR. TALT: STEVE TALT FOR SECURITY PACIFIC NATIONAL BANK.

THIS MATTER NO ONE HAS ACTUALLY FILED PETITION TO HAVE IT COORDINATED. THERE ARE PRESENTLY DISCUSSIONS AMONG TOP LEVEL PEOPLE AT KMG AND SECURITY PACIFIC REGARDING SETTLEMENT.

THIS CASE INVOLVES THE BANK LOANS MADE TO VARIOUS ENTITIES AND WE HAVE AGREEMENT WITH KMG WHERE—THEY DO NOT HAVE AGAINST THE COMPLAINT FOR A PERIOD OF TIME WHILE SETTLEMENT DISCUSSIONS ARE ONGOING.

THE OTHER DEFENDANT—WE HAVE SERVED MOST OF THE DEFENDANTS. THERE ARE SOME DEFENDANTS THAT HAVE NOT BEEN SERVED.

BUT THIS COMPLAINT, SOME OF THE SAME CAUSES OF ACTIONS ARE PART OF THE BANK OF THE WEST COMPLAINT.

AND IF THE COURT WOULD—WOULD PREFER SETTING A STATUS CONFERENCE UNTIL AFTER THAT TIME UNTIL THOSE DEMURRERS HAVE BEEN DECIDED AND PERHAPS SOME OF THE ISSUES CAN BE TAKEN CARE OF AT THAT TIME.

THE COURT: I WAS GOING TO SET IT FOR STATUS OCTOBER 5TH, 1989.

MR. TALT: THAT'S FINE, YOUR HONOR.

THE COURT: THAT WILL BE THE ORDER.

DO YOU HAVE A CALENDAR THERE?

YOU CAN MAKE SURE THAT DAY IS NOT SUNDAY.

THE CLERK: THAT'S A WEDNESDAY.

THE COURT: WEDNESDAY, SEE?

THE CLERK: NUMBER 60. SECURITY PACIFIC EQUIPMENT LEASING VERSUS—I DON'T KNOW WHO THE DEFENDANT IS.

THE COURT: SECURITY PACIFIC EQUIPMENT LEASING.

MR. COATS: YOUR HONOR, WILLIAM COASTS FOR KMG MAIN HURDMAN.

I DON'T THINK MR. STONER'S FIRM IS REPRESENTING SECURITY PACIFIC LEASING BUT THEY ARE ALL PART AND PARCEL OF THE SAME NEGOTIATIONS. SEPARATE SUBSET OF LOANS WHICH IS A SEPARATE ENTITY OF SECURITY PACIFIC BANK AND THERE IS DIFFERENT COUNSEL REPRESENTING THEM BUT THEY PROBABLY SHOULD BE TREATED IN THE SAME FASHION.

ESSENTIALLY THE SAME UNDERLYING FACTUAL CLAIMS.

MR. TALT: STEVE TALT. WE DO NOT REPRESENT SECURITY PACIFIC EQUIPMENT LEASING. THAT IS BEING HANDLED BY A SOMEONE ENTIRELY DIFFERENT BECAUSE THEY ARE INDEPENDENT OF THE BANK.

SO I AM NOT GOING TO PUT IN AN APPEARANCE ON THEIR BEHALF.

I AM NOT SURE THEIR COUNSEL HAVE IN FACT RECEIVED NOTICE OF THE STATUS CONFERENCE.

I DON'T KNOW IF THEY HAVE OR HAVEN'T. THEY ARE ON OUR LIST.

MR. COATS: WILLIAM COATS FOR KMG.

IN ANY CASE, THE SAME NEGOTIATIONS MR. TALT REFERENCE ARE ALSO GOING ON WITH REGARD TO THEM.

AND WE HAVEN'T HAD TO RESPOND IN THE CASES—WE WILL DO WHATEVER NEEDS TO BE DONE ASSUMING—DEPENDING ON THE OUTCOME OF THE SETTLEMENT NEGOTIATIONS.

THE COURT: WELL, MR. TALT, THERE REALLY IS NO APPEARANCE IN THIS CASE AND—MY ROUTINE HERE IS TO SET IT FOR DISMISSAL IN SEPTEMBER.

DO YOU THINK I WOULD DRAW AN APPEARANCE IF I DID THAT?

MR. TALT: I WOULD IMAGINE YOU WOULD, YOUR HONOR. FOR FEAR OF ANY IMPLICATION ABOUT RELATIONSHIP BETWEEN SECURITY PACIFIC NATIONAL BANK AND SECURITY PACIFIC EQUIPMENT LEASING FOR PURPOSES OF ANY FUTURE LITIGATION I WOULD IMAGINE I COULD PUT IN A SPECIAL APPEARANCE. I DON'T WANT TO APPEAR ON THEIR BEHALF.

I COULD CALL THEM. I AM SURE—AS MR. COATS HAS REPRESENTED THEY ARE PART OF THE SAME SETTLEMENT DISCUSSIONS, HE SAID ON THE SAME BASIS AS THE SECURITY PACIFIC NATIONAL BANK CASE.

THE COURT: I WILL PROVISIONALLY SET NUMBER 60 FOR STATUS CONFERENCE OCTOBER 5TH, 1989.

IF, HOWEVER, YOU ARE NOT ABLE TO PULL AN APPEARANCE AFTER YOU MAKE A CALL, THEN, WELL, CONTACT ME AND I WILL HAVE THE CLERK SEND A DISMISSAL NOTICE FOR THE SEPTEMBER DISMISSAL CALENDAR.

MR. TALT: WOULD YOU LIKE ME TO CALL NOW AND REPORT BACK TO THE COURT?

THE COURT: NOT NOW. YOU CAN DO IT AFTER THE HEARINGS ARE OVER.

MR. TALT: THANK YOU, YOUR HONOR.

THE CLERK: NUMBER 61, BRADSHAW VERSUS BAROVSKY.

MR. KENT: MARC KENT FOR MR. MCNEIL.

MR. KAMAN: GOOD MORNING, YOUR HONOR. JOHN KAMAN FOR HERBERT BAROVSKY. HE THOUGHT HE WOULD BE ABLE TO GET THROUGH THE MORNING CALENDAR WITHOUT BEING IMPLICATED.

THE COURT: MR. KENT, ARE YOU READY TO GO TO TRIAL?

MR. KENT: MY NOTES REFLECT FEBRUARY WE WERE SERVED OF THIS YEAR AND WE DEMURRED AND PLAINTIFFS COUNSEL TOOK HIS—STIPULATED WITH OUR OFFICE TO TAKE THE DEMURRER OFF CALENDAR FOR 30 DAYS TO ALLOW HIM TO AMEND.

JUNE 21 OF THIS YEAR WE RECEIVED NOTICE FROM THE COTCHETT OFFICE. WE HAVE NOT RESPONDED TO THIS COMPLAINT YET.

THE COURT: WHO IS HERE ON BEHALF OF BRADSHAW?

MR. KENT: MY UNDERSTANDING WITH PLAINTIFFS' COUNSEL HE WAS GOING TO BE CONTACTING MR. ANDERSON AND SEEKING TO HAVE MR. ANDERSON REPRESENT MR.—

THE COURT: I AM GOING TO SET THIS FOR THE SEPTEMBER DISMISSAL CALENDAR.

THE COURT: THAT CONCLUDES THE CALENDAR.

THE CLERK: THAT'S IT.

THE COURT: THANK YOU, COUNSEL.

MR. COTCHETT: THERE WERE TWO OTHER MATTERS, YOUR HONOR, YOU SET FOR ORAL HEARING.

ONE IS THE ISSUE ADDRESSED BY THE SHEA AND GOULD FIRM, AND THE OTHER IS YOU HAD MADE A

RULING IN THIS CASE THAT BEFORE ANY DEFAULTS COULD BE TAKEN THE MANUFACTURES HAD TO SEEK PERMISSION OF THIS COURT EITHER IN WRITING OR ORALLY.

WE WOULD MOVE THIS COURT TO ENTER DEFAULTS FOR ALL OF THOSE PEOPLE WHO HAVE NOT RESPONDED TO THE SERVICE OF JUNE 10TH, UNLESS TIME HAS BEEN EXTENDED.

WE WOULD ASK THAT WE BE PERMITTED TO FILE DEFAULTS IF WE HAVE NOT RECEIVED AN ANSWER BY FRIDAY AT 5:00 O'CLOCK. THIS FRIDAY BEING THE 29TH.

THE COURT: ANY OBJECTION?

MS. ARAND: YOUR HONOR, WITH RESPECT TO MR. BAYLSON I BELIEVE THIS BANKRUPTCY STAY IS STILL IN EFFECT. AND PLAINTIFFS HAVE NOT YET MADE ANY EFFORT TO LIFT THE STAY. WITH RESPECT TO MR. BAYLSON I WOULD OBJECT.

MS. ARAND: MARY ARAND FOR JOE BAYLSON.

THE COURT: MISS ARAND, THERE WOULD BE NO—I MEAN IF THERE IS A STAY THEY CAN'T ENTER DEFAULT.

MS. ARAND: YES, YOUR HONOR. I WANTED TO MAKE SURE THERE WAS NO PROBLEM WITH ANY DEFAULTS BEING ENTERED THAT WOULD NEED TO BE REMOVED.

THE COURT: ALL RIGHT. VERY GOOD.

MR. WALTER: ALLAN WALTER FOR STEPHEN RUSSO. IT IS OUR UNDERSTANDING WE RECEIVED A 30 DAY EXTENSION OF TIME FROM THE JUNE 10TH SERVICE. SO WE HAD CALENDARED OUR RESPONSE FOR AUGUST 8.

MR. COTCHETT: THAT'S CORRECT. STIPULATION WAS ENTER DEFAULTS AGAINST ANY OF THOSE NOT RESPONDED EXCEPTING THOSE WITH EXTENSIONS OF TIME.

MR. KENT: OUR FIRM IS REPRESENTING MR. MCNEIL. J.L.M. IS A BUSINESS THAT MR. MCNEIL WAS—WAS AFFILIATED WITH AFTER HIS DEPARTURE FROM TECHNICAL EQUITIES.

WE HAVE NOT BEEN AUTHORIZED TO ACCEPT SERVICE ON BEHALF OF J.L.M.

I AM UNAWARE OF THE COURT ORDERS WITH REGARD TO ORDERING COUNSEL TO ACCEPT SERVICE FOR CERTAIN PARTIES.

I HAVE TO INDICATE I AM NOT AUTHORIZED TO ACCEPT ON BEHALF OF J.L.M.

I WANT TO MAKE SURE NO DEFAULTS ARE ENTERED AS TO J.L.M. BECAUSE IT WAS AN ORGANIZATION HE WAS AFFILIATED WITH SUBSEQUENT TO HIS DEPARTURE AT TECHNICAL EQUITIES.

MR. COTCHETT: MR. MCNEIL WAS SERVED BOTH INDIVIDUALLY AND BEHALF OF J.L.M. CONSULTANT.

IF WHAT COUNSEL SAYS IS CORRECT THAT WOULD BE THE PROPER SUBJECT OF MOTION FOR JUDGMENT DOWN STREET.

ALL HAVING TO DO WITH COURT'S ORDERS AGAIN AT ISSUE.

WE BELIEVE WE HAVE SERVED HIM. WE KNOW WE HAVE SERVED MR. MCNEIL.

IF COUNSEL FEELS OTHERWISE WE WILL ENTER THE DEFAULT. HE CAN MOVE TO SET IT ASIDE AND WE WILL SEE BY AFFIDAVITS WHO WAS AND WASN'T SERVED.

MR. KENT: OUR LETTER OF AGREEMENT WITH HIS OFFICE WE WOULD ACCEPT SERVICE ON BEHALF OF MCNEIL. WE HAD NO OTHER ARRANGEMENT OR UNDERSTANDING WITH MR. COTCHETT OR ANYBODY ELSE'S FIRM WHO WE WOULD ACCEPT SERVICE OF.

THE COURT: THERE ARE HUNDREDS AND HUNDREDS OF CASES HERE.

I HAD IN ONE OF MY PRETRIAL ORDERS, AS ALL OF YOU KNOW BECAUSE YOU HAVE REVIEWED THEM ALL—AM I RIGHT?

MR. HARRISON: NO.

THE COURT: WHO SAID NO?

MR. HARRISON: YOUR HONOR—JEFFREY B. HARRISON, YOUR HONOR.

THE COURT: YES, AND I DON'T SERVE COPIES. IT IS DUTY OF COUNSEL TO COME DOWN TO THIS COURT AND READ EVERY ONE OF THEM. THEY ARE AVAILABLE TO YOU, MR. HARRISON.

IF YOU WILL SEE MY CLERK AFTER THIS PROCEEDING YOU SHOULD READ THEM, EVERY ONE.

MR. HARRISON: I HAVE BEEN TRYING TO GET THEM FOR TWO WEEKS, YOUR HONOR. WE HAD TO FINALLY GO TO CO-DEFENDANTS. WE WERE RELYING ON MR. COTCHETT'S OFFICE HAVING MAILED THEM. THAT WAS THE PROBLEM EVERY DAY.

THE COURT: I ASKED THE COTCHETT OFFICE TO MAIL THEM AS A MATTER OF COURTESY TO YOU. NOT AS A MATTER OF RIGHT.

MR. HARRISON: I WASN'T HERE—I UNDERSTOOD THAT WAS AN ORDER. I WASN'T PRESENT ON THE 13TH. TO THAT EXTENT I APOLOGIZE TO THE COURT. I HAD BEEN LED TO UNDERSTAND THAT WAS HOW WE WERE SUPPOSED TO GET THEM.

THE COURT: I WANT TO MAKE SURE YOU ALL UNDERSTAND YOU ARE BOUND BY THE RULES—THERE IS A LAW OF THIS CASE, MANY ISSUES HAVE PREVIOUSLY BEEN DECIDED. PRETRIAL ORDERS AND MANAGEMENT ORDERS THAT GOVERN THIS CASE. I EXPECT EVERY LAWYER APPEARING IN THIS COURT TO KNOW THOSE ORDERS.

I DON'T THINK IT IS AN UNREASONABLE REQUEST.

MR. HARRISON: I DON'T EITHER. I ACCEPT THAT.

THE COURT: ALL RIGHT. THE MOTION TO LIFT THE PRIOR ORDER GOVERNING DEFAULTS AND THE ENTRY OF DEFAULTS IS GRANTED.

WHICH MEANS NO MORE THAN THERE ARE NO LONGER ANY SPECIAL ORDERS WITH RESPECT TO DEFAULTS.

YOU CAN TREAT CASES, OR COMPLAINTS FILED IN THIS CASE THE WAY YOU WOULD TREAT THEM IN ANY OTHER CASE. COTCHETT.

MR. COTCHETT: THE NEXT MATTER YOU RAISED THE ISSUE OF WAS RESPECT TO LIAISON COUNSEL. WE ARE NOT CONCERNED WITH BUT OUR ONLY LETTER FROM SHEA AND GOULD WHERE THEY POINT OUT THERE IS A PROBLEM WITH THE OCTOBER 1ST DATE VIS-A-VIS SECTION 36.

JUST FOR THE RECORD I WANT TO RESPOND TO THE LETTER.

IT IS SIMPLY SAYING THAT BY PRIOR ORDER OF THIS COURT YOU HAD STATED THAT YOU WOULD SET A SECOND ROUND OF TRIALS ON AUGUST 1ST. THAT WAS THEN CONTINUED BECAUSE NEW DEFENDANTS WERE BROUGHT IN.

THEY RAISE ON PAGE 2 OF THE LETTER THEIR OBJECTIONS— I APOLOGIZE—ON PAGE 3 OF THE LETTER—THEIR OBJECTIONS TO YOUR GRANTING THIS TRIAL ALL OF WHICH HAVE BEEN ANSWERED IN PRIOR RULINGS OF THIS COURT. ONE OF WHICH WAS THAT THE 70 YEAR OLD IN EACH CASE WOULD NOT HAVE A SUBSTANTIAL INTEREST IN THE CASE. BECAUSE IT'S COORDINATED. THAT RULING HAS BEEN MADE.

THE NEXT ONE IS THAT IT WOULD GIVE THEM INSUFFICIENT TIME TO PREPARE.

THERE HAS BEEN A RULING ON THAT.

AND LASTLY, I GUESS IF I READ IT CORRECTLY, THEY ARE NOT 70 YEARS OLD AND WE HAVEN'T MADE A MOTION.

I JUST WANT TO BE ABSOLUTELY CLEAR THAT WHEN WE FILED THE DOCUMENT ON MONDAY WITH THE COURT AT THE COURT'S REQUEST IN THE QUOTE MEMORANDUM OF POINTS AND AUTHORITIES REGARDING THE DESIGNATION WE HAVE CERTIFIED THAT EACH ONE OF THOSE INDIVIDUALS ARE IN FACT 70 YEARS OLD OR OLDER.

THERE IS ONE EXCEPTION.

THERE IS A WIFE WHO IS ONLY 66. AND I GUESS ON THAT BASIS THEY COULD ARGUE 50 PERCENT OF THE CASE DOES NOT HAVE A SUBSTANTIAL ISSUE.

BUT I JUST WANT TO PUT ON THE RECORD THAT IN TERMS OF THE RECORD ITSELF WE HAVE COMPLIED WITH 36 AND THIS COURT'S ORDER IN GIVING YOU THE 70 YEAR OLDS AND I WANT TO POINT OUT THAT THE COMMENTS MADE IN THE SHEA, GOULD LETTER DO NOT COMPLY WITH THE PRIOR RULINGS OF THIS COURT.

AND LASTLY WE HAVE, I GUESS, THE DEFENSE LIAISON.

THE COURT: MISS KOCH.

MS. KOCH: YES, YOUR HONOR.

THE COURT: COME TO THE MICROPHONE.

I WANT TO DISCUSS THIS CASE WITH YOU.

MS. KOCH: LET ME EXPRESS MR. COOPER'S REGRET HE COULDN'T BE HERE TODAY.

THE COURT: YOU DID SUCH A SUPERB JOB, YOU KNOW, AS DEFENSE LIAISON. ARE YOU STILL IN A SUBSTANTIAL NUMBER OF THESE CASES?

MS. KOCH: YOUR HONOR, WE HAVE SETTLED COMPLETELY WITH THOSE PLAINTIFFS REPRESENTED MR. COTCHETT, RUBY AND ANDERSON.

WE ARE IN SEVERAL—THREE, I BELIEVE OF THE CASES ON CALENDAR THIS MORNING. WE WOULD, OF COURSE, BE WILLING TO ASSIST THE COURT IN ANY WAY POSSIBLE.

THE COURT: AND YOU ARE GOING TO BE PAID FOR IT BY—NO?

WAIT A SECOND. NO?

MS. KOCH: IF THE COURT IS REFERRING TO THE DUTY TO DEFEND THROUGH OXFORD IT IS TRUE THERE IS A CONTINUING DUTY TO DEFEND BUT IT IS ALSO TRUE NOW THAT MOST OF THE CASES AGAINST THE DEFENDANTS HAVE BEEN SUBSTANTIALLY WOUND DOWN AND WE HAVE REACHED STANDSTILLS AGAINST OTHERS. THE INSURANCE COMPANY WOULD EXPECT OUR COSTS WOULD GO DOWN AS WELL.

THE COURT: ALL RIGHT. MR. BLEARS.

MR. BLEARS, ARE YOU IN THE CASE SET FOR OCTOBER?

MR. BLEARS: WE ARE PRESENTLY IN SOME OF THE CASES SET FOR OCTOBER WITH RESPECT TO SOME OF OUR CLIENTS, THOSE BEING THE OUTSIDE DIRECTORS WHO HAD SUMMARY JUDGMENT IN DEED CASES.

I THINK WE'VE REACHED AN AGREEMENT WITH ALL OF THE MEMBERS OF THE P.L.G. WHICH WOULD CALL FOR A—FOR A STANDSTILL AND ULTIMATELY A RESOLUTION OF THOSE CASES AGAINST THE THREE DEFENDANTS WHO HAD SUMMARY JUDGMENT.

SO I—I EXPECT IN THE VERY NEAR FUTURE WE WILL NOT BE IN THOSE CASES IN OCTOBER IN ANY REGARD.

MS. KOCH: YOUR HONOR, WE ARE NOT IN ANY OF THE OCTOBER CASES AS PRESENTLY SET.

THE COURT: MR. JOHNSON, ARE YOU IN ANY OF THEM?

MR. JOHNSON: YOUR HONOR, I AM HAPPY TO REPORT I WAS ABLE TO TALK TO MY CLIENT DURING BREAK AND I DON'T SEE ANY REASON WHY WE WOULD BE IN ANY CASES IN OCTOBER.

THE COURT: GOOD.

WELL, I TELL YOU, I—WHAT WE'VE SEEN TODAY, AND IF—IF I HAVE BEEN—OR APPEARED TO BE RUDE TO ANY ATTORNEY HERE I APOLOGIZE FOR THAT. I DID NOT MEAN TO DO THAT.

IT'S JUST THAT THE ONLY WAY THIS CASE CAN FUNCTION IS WITH DEFENSE LIAISON COUNSEL. IT SIMPLY COMES TO A STANDSTILL WITHOUT IT.

THE TWO FIRMS THAT I LOOKED AT THAT MIGHT PROVIDE DEFENSE LIAISON SERVICES TO THE COURT WHO ARE SET FOR OCTOBER ARE NEW FIRMS. THAT'S A PROBLEM.

BECAUSE DEFENSE LIAISON IS EXPECTED TO KNOW IN DETAIL THE RECORD IN THIS CASE WHICH IS EXTENSIVE.

NOW, ONE OF THE THINGS I COULD DO IS I COULD BECAUSE YOU ALL ARE STILL IN THE CASE—MISS KOCH STILL IN THE CASE—MISS KOCH AND MR. BLEARS YOU ARE STILL IN THE CASE.

BECAUSE WE HAVE THIS SECOND SET OF INVESTOR PLAINTIFFS MOVING TO TRIAL AGAINST YOUR CLIENTS.

MR. BLEARS: THERE ARE SEVERAL CASES THAT STILL REMAIN—

THE COURT: YES, IT'S ALL—AND THE SAME IS TRUE OF MR. JOHNSTON'S CLIENT.

IT'S—AS WELL AS SECURITY AND BANK OF THE WEST.

IT'S ALTOGETHER POSSIBLE FOR ME TO TAKE THE EASY WAY OUT AND NAME ONE OF YOU AS DEFENSE LIAISON. I MAY DO THAT.

I AM INTERESTED TO KNOW, THOUGH, IN YOUR CASE, MR. BLEAR—BLEARS, YOU ARE STILL BEING PAID BY NATIONAL UNION. I HOPE YOU SAY YES.

MR. BLEARS: AS OF TODAY WE HAVE A HEARING IN BANKRUPTCY COURT ON FRIDAY. I AM NOT SURE WHAT POSITION NATIONAL UNION IS TAKING WITH RESPECT TO OUR DEFENSE COSTS.

IT IS UNCLEAR WHAT RELIEF THEY ARE SEEKING BY WAY OF A MOTION TO CONFIRM THEIR INTERPLEADER.

I PRESUME THAT THEY—THEY DON'T BELIEVE THEY THINK THAT WILL NECESSARILY CUT-OFF THEIR OBLIGATION TO PAY US. IT IS HARD TO SAY WHAT POSITION NATIONAL UNION IS GOING TO TAKE.

THE COURT: THE EXISTING LIAISON COUNSEL IS—

MR. BLEARS: YES.

THE COURT: THAT WORKED FINE FOR THE TRIAL.

FRANKLY, I NEED A LARGER FIRM TO HANDLE THIS—EX-PARTY APPLICATIONS REQUIRE WHAT, TEN SECRETARY'S TO GO GET ON THE PHONE, MISS KOCH, SOMETHING LIKE THAT?

MS. KOCH: YES, YOUR HONOR.

THE COURT: DO YOU HAVE TEN SECRETARIES, MISS ARAND, WHO CAN DROP EVERYTHING AND GO TO WORK AND CALL EVERYBODY TO COME DOWN HERE?

MS. ARAND: NO, YOUR HONOR, WE HAVE TWO SECRETARIES AND A PARALEGAL.

MR. MANUS: YOUR HONOR, I AM JEFFREY MANUS, A PARTNER WITH THE COREY LAW FIRM IN

MILLBRAE. WHILE WE HAVE NOT SOLICITED THE JOB OF DEFENSE LIAISON, HAVE NOT VOLUNTEERED FOR IT, I WOULD LIKE TO SAY GIVEN OUR LOCATION IN THE BAY AREA, I BELIEVE WE HAVE THE STAFFING AND FACILITIES TO PERFORM THAT FUNCTION AND IF IT IS THE COURT'S DESIRE WE WOULD DO THE BEST WE COULD DO SO. I BELIEVE WE COULD DO SO—WE HAVE IN THE—WE HAVE BEEN IN THIS CASE SINCE JANUARY OF THIS YEAR.

AND I BELIEVE HAVE ESTABLISHED A FAIRLY GOOD RAPPORT WITH PLAINTIFFS' COUNSEL AND WITH DEFENSE COUNSEL.

THE COURT: ALL RIGHT. SO YOU ARE WILLING.

MR. MANUS: AND WE EXPECT TO BE IN THE TRIALS IN OCTOBER AND—

THE COURT: WHO IS YOUR CLIENT?

MR. MANUS: OUR CLIENTS ARE WILLIAM SCHISANO AND ROBERT FOLEN. BOTH ARE VICE-PRESIDENTS OF TECHNICAL EQUITIES CORPORATION.

THE COURT: NATIONAL UNION.

MR. MANUS: NATIONAL UNION IS PAYING FOR THEIR DEFENSE.

THE COURT: SO MR. BLEARS IS BEING PAID BY NATIONAL UNION.

YOU ARE BEING PAID BY NATIONAL UNION.

I THINK I HAVE AN IDEA.

I'M GOING TO APPOINT BLEARS AS DEFENSE LIAISON COUNSEL.

BUT WAIT, MR. BLEARS, BEFORE YOU PULL OUT YOUR HANDKERCHIEF AND MOP YOUR EYES—

MR. BLEARS: I WAS JUST GOING TO THANK YOU, YOUR HONOR.

THE COURT: LET ME SAY THAT AT THE—AND I'M ALSO GOING TO MAKE COREY, ORTON THE BACKUP FIRM.

AT THE END OF THE TWO MONTHS OR SO WE'LL SAY IF MR. BLEARS CAN'T BE RELIEVED AND COREY, ORTON MOVE IN TO TAKE OVER BECAUSE YOU'LL HAVE THE LARGER—ALTHOUGH, THE—YOU SAY SCHISANO AND FOLEN?

MR. BLEARS: THAT'S CORRECT, YOUR HONOR.

MR. COTCHETT: DOWNSTREAM I BELIEVE THEY WILL BE, YOUR HONOR, AT SOME POINT.

THE COURT: IS THERE ANYBODY HERE WHO WILL NOT BE OFFERED THAT DE LA OSSA ARRANGEMENT?

MR. COTCHETT: CONTINENTAL PARAGON. THEY ARE IN SACRAMENTO.

THE COURT: YES.

MS. SAWYER: KIMBERLY SAWYER. YOUR HONOR, WE DO NOT HAVE INSURANCE COVERAGE AT THIS TIME.

WE ARE BRAND SPANKING NEW TO THE CASE. WE ARE LOCATED IN SACRAMENTO.

WE JUST DON'T FEEL ADEQUATE TO BE LIAISON COUNSEL AT THIS TIME.

THE COURT: I RECEIVED A LETTER FROM SOMEBODY WHO APPARENTLY WORKS FOR YOU.

MS. SAWYER: YES, YOUR HONOR. MR. WYATT (PHONETIC).

THE COURT: HE REPORTS DIRECTLY TO YOU, DOES HE?

MS. SAWYER: NO, YOUR HONOR, I REPORT DIRECTLY TO HIM.

THE COURT: HE SAID THAT IN HIS LETTER WHAT YOU SAID WAS SOMETHING THAT HE REALLY MEANT.

MS. SAWYER: I DON'T BELIEVE I CAN RESPOND TO THAT, YOUR HONOR.

THE COURT: WELL, ACTUALLY, WE ARE LOOKING FORWARD TO MEETING HIM.

ALL RIGHT. THAT WILL BE THE ORDER ON DEFENSE LIAISON COUNSEL.

NOW, I'VE RECEIVED ANOTHER ANGRY LETTER FROM BRONSON, BRONSON, MCKENNA TELLING ME THERE ARE ANY NUMBER OF LAWYERS WRITING THEM LETTERS ASKING FOR INSURANCE DOCUMENTS AND THEY POINT OUT RIGHTLY THOSE ARE ALL MADE AVAILABLE TO LIAISON COUNSEL AND SHOULD BE MADE AVAILABLE THROUGH LIAISON COUNSEL. THAT'S RIGHT. THAT'S THE WAY IT IS SUPPOSED TO WORK.

YES.

MR. HARRISON: YOUR HONOR, IF I COULD REPORT—

THE COURT: SAY YOUR NAME.

MR. HARRISON: JEFFREY HARRISON.

IF I COULD REPORT A POSITIVE NOTE. WE HAVE BEEN ATTEMPTING FOR FOUR OR FIVE DAYS TO TRACK DOWN ALL THE BOXES REFERRED TO IN THE BRONSON LETTERS. WHAT I HAVE FOUND OUT THE FIRM HAS MICROFICHE OR FILM OF THE FIRST 14 BOXES THAT GO FROM '82 TO '85.

WE ARE TRYING TO FIND THAT MICROFILM NOW. THEY CAN'T—AS OF 5:00 O'CLOCK YESTERDAY AND ABOUT 10:00 O'CLOCK TODAY IT STILL HAS NOT BEEN LOCATED.

THE GIBSON DUNN FIRM HAD TAKEN A LOOK AT TEN BOXES, '72 TO '82 AS WELL AS, APPARENTLY THE FORELLA FIRM. THOSE—THERE WERE NO HARD COPIES MADE NOR TO OUR KNOWLEDGE OR ANYBODY'S KNOWLEDGE WERE THERE—

THE COURT: THIS IS—THIS IS INTERESTING BUT I—I DON'T WANT TO HEAR ABOUT THIS.

MR. HARRISON: I WAS TRYING TO TELL YOU THERE ARE NO DOCUMENTS OUT THERE.

MR. RUBY: THAT IS A POSITIVE NOTE.

THE COURT: THAT IS POSITIVE, I GUESS. THERE IS A WAY OF TRANSFORMING MICROFICHE TO HARD COPY.

MR. HARRISON: WE ARE TRYING TO FIND THE MICROFICHE. I THINK THAT'S WHAT I'M TRYING TO SAY, YOUR HONOR.

WE KNOW WHO COPIED WHAT AND WHO DIDN'T COPY IT.

AND WHAT WASN'T COPIED.

THE COURT: ARE YOU SAYING MR. COOPER'S FIRM DOESN'T HAVE COPIES OF ALL THIS STUFF.

MS. KOCH: I WAS UNAWARE OF THOSE PARTICULAR DOCUMENTS. I AM WORK WITH COUNSEL. IF WE HAVE THE MICROFICHE I WILL MAKE EVERY EFFORT TO GET HARD COPIES AVAILABLE IN THE DEFENDANTS DEPOSITORY.

THE COURT: ABOUT THIS. I THINK EVERY ONE OF YOU IS LOOKING TO NATIONAL UNION FOR THE PAYMENT OF YOUR BILLS. AM I WRONG ABOUT THAT?

MR. HARRISON: NO, SIR. NO, YOUR HONOR.

THE COURT: YES, WELL, THEN WOULDN'T IT BE SENSIBLE FOR LIAISON COUNSEL TO IMMEDIATELY GO TO NATIONAL UNION AND TELL THEM MISS ARAND DID THIS DURING THE COURSE OF THE TRIAL.

I DON'T KNOW WITH WHAT SUCCESS SHE DID IT BUT SHE DID IT AND WENT TO NATIONAL UNION AND SAID LOOK IT'S CHEAPER FOR YOU TO AUTHORIZE ME TO COOPERATE THAN TO SIMPLY ALLOW EVERYBODY TO INDEPENDENTLY DO ALL THIS WORK. IT SEEMS SENSIBLE TO ME. IT SEEMS TO ME THEY WOULD SEE THE SENSE OF THAT. I THINK THAT WOULD BE THE FIRST ORDER OF BUSINESS FOR DEFENSE LIAISON COUNSEL.

THE COURT: YES.

MS. SAWYER: YOUR HONOR, I WOULD LIKE TO SAY ONE MORE THING REGARDING APPOINTMENT OF OUR FIRM AS BACKUP FOR LIAISON COUNSEL. THERE WAS—

THE COURT: NO. NO. NOT YOUR FIRM.

I SAID COREY, ORTON.

MS. SAWYER: I WILL SIT DOWN. THANK YOU VERY MUCH.

MR. RUBY: ALAN RUBY.

I UNDERSTOOD FROM THE IN CHAMBERS CONFERENCE THAT CERTAIN ATTORNEYS INCLUDING MYSELF HAVE BEEN ORDERED TO REMAIN IN THE BUILDING. I HAVE—I AM SUPPOSED TO BE IN ALAMEDA COUNTY THIS AFTERNOON. I DEFER FROM THE DIRECT ORDER FROM THE COURT TO STAY HERE. I THINK IT SHOULD BE REFLECTED ON THE RECORDS.

THE COURT: YOU ARE ORDERED TO REMAIN HERE IN THIS COURTROOM AND—UNTIL FURTHER ORDER OF THE COURT.

MR. RUBY: THANK YOU.

THE COURT: WE HAVE A MEETING HERE AT 2: 00 O'CLOCK CONCERNING THE EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME TO HEARING A MOTION TO COMPEL SETTLEMENT.

ANYTHING ELSE?

ALL RIGHT. THANK YOU, COUNSEL.

(WHEREUPON, THE LUNCHEON RECESS WAS TAKEN.)

SANTA CLARA, CALIFORNIA **JULY 27, 1988**

AFTERNOON SESSION

MR. RUBY: I AM ALAN RUBY. A SPECIAL PROCEEDING ARISING FROM THE TECHNICAL EQUITIES LITIGATION. I AM ALAN RUBY REPRESENTING TECHNICAL EQUITIES PLAINTIFFS' LITIGATION GROUP.

MR. JOHNSTON: I AM ALAN JOHNSTON FOR MORRISON AND FOERSTER REPRESENTING BEAR, STEARNS AND COMPANY AND MICHAEL DOHERTY, DEFENDANTS.

MR. MCMANIS: I AM JAMES MCMANIS, THE SPECIAL MASTER.

MR. RUBY: MR. JOHNSTON AND I HAVE STIPULATED ON BEHALF OF OUR RESPECTIVE PARTIES THAT TE DISMISSALS AND RELEASES CALLED FOR BY THE SETTLEMENT AGREEMENT TO BE EXECUTED BY PLAINTIFFS IN FAVOR OF MICHAEL DOHERTY AND BEAR, STEARNS HAVE NOW BEEN COMPLETED AND ARE LODGED WITH THE SPECIAL MASTER, MR. MCMANIS AND WE HAVE FURTHER STIPULATED IN LIGHT OF THOSE FACTS MR. MCMANIS MAY EXECUTE A CERTIFICATE OR CERTIFICATION OF COMPLETION OF THE RELEASES AND DISMISSALS AS TO MICHAEL DOHERTY AND BEAR, STEARNS.

AM I CORRECT, MR. JOHNSTONE?

MR. JOHNSTON: YOU ARE CORRECT. I HAVE BEEN HANDED THIS AFTERNOON THREE ADDITIONAL RELEASES FROM MR. TRUSSELL.

HE HAS SIGNED ON BEHALF OF SOME OF THE ENTITIES AND MAYBE WHAT WE SHOULD GET IS HIM JUST TO SAY HE WILL FURNISH US WITH A LETTER--

MR. RUBY: SAM TRUSSELL, COULD WE SEE YOU FOR A MINUTE, PLEASE.

MR. JOHNSTON: OFF THE RECORD FOR A MOMENT, HERE.

(WHEREUPON, THERE WAS DISCUSSION OFF RECORD.)

MR. JOHNSTON: I THINK I STOPPED MID SENTENCE. WHAT I WAS SAYING IS I WAS GIVEN THREE RELEASES TODAY IN WHICH CASE—IN WHICH RELEASE MR. TRUSSELL HAS SIGNED ON BEHALF OF SOME OF THE RELEASERS AND HE HAS TOLD ME THAT HE WILL EITHER FURNISH NEW RELEASES WITH ORIGINAL SIGNATURES ON BEHALF OF THESE RELEASERS OR HE WILL FURNISH ME WITH LETTERS FROM THEM SAYING THAT HE WAS AUTHORIZED TO SIGN ON THEIR BEHALF; IS THAT CORRECT?

MR. TRUSSELL: THAT'S CORRECT.

MR. JOHNSTON: AND GIVEN THAT REPRESENTATION WE BELIEVE ALL OF THE RELEASES ARE AS AGAINST BEAR, STEARNS AND MICHAEL DOHERTY HAVE, IN FACT, BEEN DEPOSITED WITH MR. MCMANIS AND ALSO THE REQUEST FOR DISMISSAL.

MR. RUBY: FINE. AS TO—IN LIGHT OF THAT STIPULATION, MR. JOHNSTON, MAY I PLEASE SUBMIT TO MR. MCMANIS FOR SIGNATURE TOMORROW A CERTIFICATE IN THE FORM I PREVIOUSLY PROVIDED YOU BY TELECOPY YESTERDAY FOR HIM TO EXECUTE WITH AN EFFECTIVE DATE OF TODAY.

AND, OF COURSE, I WILL TELECOPY THE ACTUAL FORM ITSELF BEFORE I GIVE IT TO MR. MCMANIS AS LONG AS WE CAN AGREE THE EFFECTIVE DATE IS TODAY.

MR. JOHNSTON: THAT'S—THAT'S FINE.

MR. MCMANIS: I WOULD LIKE TO SIMPLY SAY FOR YOUR BENEFIT, MR. JOHNSTON, I AM PREPARED TO EXECUTE THAT CERTIFICATE IN THE FORM SUBMITTED BASED SOLELY ON YOUR STIPULATION CONCERNING THE RELEASES AND THE DISMISSALS.

I HAVE NOT PERSONALLY REVIEWED THESE DOCUMENTS OR EXAMINED THEM OR DETERMINED PERSONALLY WHETHER IN FACT THEY ARE IN COMPLETE AND PROPER FORM AND I AM RELYING ON YOUR STIPULATION TO ISSUE THE CERTIFICATE. AS LONG AS YOU UNDERSTAND THAT I HAVE NO PROBLEM DOING THAT.

MR. JOHNSTON: YES, I UNDERSTAND THAT.

MR. RUBY: ALL RIGHT. THANK YOU.

(WHEREUPON, THE EVENING RECESS WAS TAKEN.)

BEFORE THE
BOARD OF ACCOUNTANCY
STATE OF CALIFORNIA

In the Matter of the Accusation Against: KMG MAIN HURDMAN Two Embarcadero Center, Suite 2500 San Francisco, CA 94111 CPA Partnership Certificate No. CX 4292 MARILEE PIEROTTI LAU, CPA Two Embarcadero Center San Francisco, CA 94111 CPA Certificate No. 20125 EA ROBERT ENGEL NILSSEN, CPA Two Embarcadero Center, Suite 2400 San Francisco, CA 94111 CPA Certificate No. 14437 EL DON FRASER OLIVER, CPA 3800 Scott Street, No. 2 San Francisco, CA 94123 CPA Certificate No. 40888 EI KRISTIN DIANE TOLOMEO, CPA 211 Elm Street, No. 103 San Mateo, CA 94401 CPA Certificate No. 38301 EL *Respondents*	No. 532 L-43680

DECISION

This matter was heard on behalf of the Board of Accountancy (hereinafter "Board") by Ruth S. Astle, Administrative Law Judge of the Office of Administrative Hearings, State of California on January 19-22, 25-30 and February 1-5, 8-11, 16-19 and 22, 1988 in San Francisco, California.

Complainant was represented by John E. Barsell, Jr., Deputy Attorney General.

Respondent KMG Main Hurdman was represented by Irwin F. Woodland, John T. Behrendt and George B. Curtis, Attorneys at Law, Gibson, Dunn & Crutcher, One Montgomery Street, West Tower, San Francisco, California 94104. Respondent Robert Engel Nilssen was present and was also represented by Gibson, Dunn & Crutcher.

Respondent Don Oliver was present and represented by Donald J. Buckley, Attorney at Law, Dorr, Cooper & Hays, 50 Francisco Street, Suite 210, San Francisco, California 94133-2100 and by Irwin F. Woodland, John T. Behrendt, and George B. Curtis, Attorneys at Law, Gibson, Dunn & Crutcher, One Montgomery Street, West Tower, San Francisco, California, 94104.

Respondent Kirstin Tolomeo was present and represented by Charles B. Klinedinst and Nance Becker, Attorneys at Law, Rogers, Joseph, O'Donnel & Quinn, 311 California Street, San Francisco, California 94104 and Gibson, Dunn & Crutcher as set forth above.

Respondent Marilee Lau was present and represented by Martin Kresse and Randall A. Burrows, Attorneys at Law, McKenna, Conner & Cuneo, One Market Plaza, Steuart Street Tower, 27th Floor, San Francisco, California 94105 and Gibson, Dunn & Crutcher as set forth above.

The Board received the Administrative Law Judge's Proposed Decision, dated May 26, 1988. Thereafter, the Board considered the Proposed Decision and on July 5, 1988, issued an Order of Nonadoption pursuant to Government Code section 11517(c).

The complainant and all respondents were duly noticed of the Order of Nonadoption and were provided the opportunity to file written argument. The parties timely filed written briefs wherein they argued their respective positions concerning the Board's Order of Nonadoption.

On September 20 and October 6, 1988, the Board met in executive session to consider the matter. The executive sessions were chaired by Henry Yee, Vice-President of the Board. Other Board members present were:

Walter Finch (September 20th only)
Jack Kazanjian
Ira M. Landis
Thomas W. Orr
Celeste Pinto
Earl F. Rippee
James J. Sullos, Jr.

Frank Britt, an Administrative Law Judge of the Office of Administrative Hearings was present at both executive sessions.

After duly considering the entire record and all briefs and other documents submitted by the parties, the Board makes the following findings of fact, determination of issues and order:

FINDINGS OF FACT

I

1. Della Bousquet made the Accusation in her official capacity as the Executive Officer of the State Board of Accountancy and not otherwise.

2. On August 7, 1981, a Certified Public Accountant Partnership Certificate, No. CX 4292, was issued to KMG Main Hurdman. The certificate is currently in full force and effect and is renewed through December 31, 1988. Although KMG Main Hurdman is licensed through 1988, it ceased to practice as a certified public accountant partnership on March 31, 1987. At that time, a majority of the partners of KMG Main Hurdman became partners of Peat Marwick Mitchell & Co. which then changed its name to Peat Marwick Main & Co.

3. On March 28, 1969, Robert Engel Nilssen (hereinafter "respondent Nilssen") was licensed as a Certified Public Accountant Certificate No. 14437 EL. The certificate is currently in full force and effect and is renewed through December 31, 1988.

4. On April 26, 1974, Marilee Pierotti Lau (hereinafter "respondent Lau") was licensed as a Certified Public Accountant, Certificate No. 20125 EA. The certificate was in full force and effect during all times relevant herein.

5. On August 3, 1984, Don Fraser Oliver (hereinafter "respondent Oliver") was licensed as a Certified Public Accountant, Certificate No. 40888 EI. The certificate was in full force and effect during all times relevant herein.

6. On July 29, 1983, Kirstin Diane Tolomeo (hereinafter "respondent Tolomeo") was licensed as a Certified Public Accountant, Certificate No. 38301 EL. The certificate is in full force and effect and is renewed through December 31, 1988.

II

1. On or about June 28, 1985, respondent KMG Main Hurdman (hereinafter "KMG") issued an unqualified report on its examination of the consolidated financial statements of Technical Equities Corporation (hereinafter "TEC") as of March 31, 1985. All individually named respondents were partners and/or employees of KMG who had responsibilities in the TEC audit as follows:

Respondent Lau was the engagement partner with primary responsibility for the audit. Respondent Lau signed the audit report. Respondent Nilssen was the partner with responsibility for a technical review of the audit. Respondent Oliver was an audit manager with responsibility for the manufacturing divisions and asset managed group of companies within TEC and also held the responsibility for reviewing some of the work of respondent Tolomeo. Respondent Tolomeo was a supervisor of the audit with responsibility for corporate and real estate activities of TEC.

2. Respondents Lau, Nilssen, Tolomeo and KMG were aware that TEC had significant business relationships with STern Management Associates (hereinafter "SMA"). Harry Stern was the Chairman of the Board of TEC, active in SMA and trustee of

several limited partnerships with significant business relationships with TEC. Harry Stern refused the request of respondent Lau to allow access to SMA's books and records.

3. In issuing an unqualified report said respondents wrongfully relied on the representations of TEC management that there were no related party transactions between TEC and SMA and failed to adequately expand the scope of the audit to examine the activities of SMA and Harry Stern, Trustee.

4. Said wrongful reliance and failure of respondents Lau, Nilssen, Tolomeo and KMG are extreme departures from generally accepted auditing standards and thereby said respondents are guilty of gross negligence in that they failed to exercise appropriate professional skepticism with regard to known and unknown related party transactions and failed to appropriately investigate the activities of SMA and Harry Stern, trustee.

III

During the audit respondents Lau, Nilssen, Tolomeo and KMG became aware that TEC in March 1985 had advanced $25.8 million to Continental Paragon, a subsidiary of Speer Development Corporation (Speer) for option deposits. The money immediately was transferred to Harry Stern. In examining the option deposit transactions said respondents failed to sufficiently investigate and disclose the true nature and true value of the transactions.

Said failure by respondents is an extreme departure from generally accepted auditing standards and thereby said respondents are guilty of gross negligence.

IV

It was not established that respondent Oliver committed gross negligence by reason of any acts or omissions on his part in connection with the audit.

V

1. With respect to respondent Lau, Nilssen and Tolomeo, respondent KMG staffed the audit as follows:

a. Respondent Lau was the engagement partner. She had been on this engagement for 7 years and had 15 years experience in the industry.

b. Respondent Nilssen was the technical review partner. He had served in this capacity on this engagement for 3 years.

c. Respondent Tolomeo was the supervisor of the audit in the areas of real estate and corporate activities and designated as the "manager." She had worked on the audit previously.

d. Respondent Oliver supervised the audit of the lease transactions and supervised audit work performed on several of the subsidiaries and had some review over the administrative portions of the audit engagement. He had one year on the engagement and 8 years experience in the industry.

e. There were a variety of other professionals on the audit or available for consultation.

2. During the audit of TEC (a Securities and Exchange Commission (SEC) registrant), respondent KMG became aware that the staff of the SEC was investigating the roles of respondents Nilssen and Oliver in the audits of Citel, Inc. and Tri-Comp Sensors, Inc. Respondent KMG undertook its own in-house investigation. Partners from other offices were assigned to review the work papers of Citel and Tri-Comp Sensors to determine whether or not any action should be taken. Respondent KMG determined that no action against either respondent Nilssen or Oliver was in order.

3. It was not established that respondent KMG committed gross negligence by failing to adequately staff the TEC audit. It was not an extreme departure from the standard of practice to allow respondents Nilssen and/or Oliver to continue on the audit after respondent KMG learned of the SEC investigation.

VI

1. On September 17, 1986 the SEC filed an Order Instituting Proceedings and Opinion and Order Pursuant to Rule 2(e) of the Commission's Rules of Practice. Each respondent, Nilssen and Oliver, entered into an agreement with the SEC consenting to entry of the Opinion and Order.

Pursuant to the Opinion and Order respondent Nilssen could not practice before the SEC for one year and respondent Oliver could not practice before the SEC for six months. Each was required to attend 40 hours continuing education which each has completed. Each respondent, Nilssen and Oliver, has been reinstated to practice before the SEC.

VII

The above findings of fact are established by clear and convincing evidence to a reasonable certainty.

* * * * *

DETERMINATION OF ISSUES

1. Cause for disciplinary action against respondents KMG, Lau, Nilssen and Tolomeo exists pursuant to Business and Professions Code section 5100(c) by reason of gross negligence as found in paragraph II, subparagraph 4, of the findings of the fact.

2. Cause for disciplinary action against respondents KMG, Lau, Nilssen and Tolomeo exists pursuant to Business and Professions Code section 5100(c) by reason of gross negligence as found in paragraph II of the findings of the fact.

3. No cause for disciplinary action against respondent Oliver pursuant to Business and Professions Code section 5100(c) exists as found in paragraph IV of the findings of fact.

4. Cause for disciplinary action against respondent KMG pursuant to Business and Professions Code section 5100(c) was not established as stated in paragraph V, subparagraph 3, of the findings of fact.

5. Cause for disciplinary action against respondents Nilssen and Oliver exists pursuant to Business and Professions Code section 5100(g) in that said respondents' right to practice before the SEC was suspended as found in paragraph VI of the findings of the fact.

WHEREFORE, THE FOLLOWING ORDER is hereby made:

KMG Main Hurdman

Certificate No. CX 4292 issued to respondent KMG Main Hurdman is revoked pursuant to Determination of Issues 1 and 2 separately and for all of them; provided, however, said revocation is stayed and respondent is placed on probation for five (5) years on the following terms and conditions:

(1) The certificate shall be suspended for a period of sixty (60) days for each Determination of Issues. Both suspensions shall run concurrently.

(2) Respondent KMG Main Hurdman shall not accept any new SEC registrant clients for a period of sixty (60) days from the effective date of this decision. Partners who were assigned to the San Francisco partnership office of respondent KMG Main Hurdman as of June 30, 1985, shall not accept nor be assigned to or refer to any other employee or partner any new SEC registrant clients for a period of sixty (60) days from the effective date of this decision.

(3) Respondent KMG Main Hurdman and its partners, who were assigned to the San Francisco partnership office on June 30, 1985, shall notify all their audit clients of this decision and shall deliver each audit client a copy thereof within a period of sixty (60) days from the effective date of this decision.

(4) Respondent shall obey all federal, California, other state and local laws including those rules relating to the practice of public accountancy in California.

(5) Respondent shall cooperate fully with the Board of Accountancy, and any of its agents or employees in their supervision and investigation of respondent's compliance with the terms and conditions of this probation.

(6) Respondent shall be subject to, and shall permit, a general review of the respondent's professions practice in the San Francisco office. Such review shall be conducted by representatives of the Board whenever designated by the Administrative Committee, provided notification of such review is accomplished in a timely manner.

If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

Kirstin Diane Tolomeo

Certificate No. 38301 EL issued to respondent Kirstin Diane Tolomeo is revoked pursuant to Determination of Issues numbers 1 and 2 separately and for all of them; provided, however, said revocation is stayed and respondent is placed on probation for one and one-half years on the following terms and conditions:

(1) The certificate shall be suspended for a period of six (6) months for Determination of Issues number 1 and nine (9) months for Determination of Issues number 2. Both suspensions shall run concurrently. During the suspension, the respondent shall engage in no activities for which a permit to practice public accountancy is required.

(2) Respondent shall complete thirty-two (32) hours of SAS update and FASB update and related professional education courses within one (1) year. This shall be in addition to CPE requirements for renewal.

(3) Respondent shall obey all federal, California, other state and local laws including those rules relating to the practice of public accountancy in California.

(4) Respondent shall submit quarterly written reports to the Board on a form provided by the Board.

(5) Respondent shall make personal appearances and report to the Administrative Committee at the Board's

notification, provided such notification is accomplished in a timely manner.

(6) Respondent shall cooperate fully with the Board of Accountancy, and any of its agents or employees in their supervision and investigation of her compliance with the terms and conditions of this probation.

(7) In the event respondent should leave California to reside or practice outside this state, respondent must notify Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.

(8) Respondent shall be subject to, and shall permit, a general review of the respondent's professions practice. Such review shall be conducted by representatives of the Board whenever designated by the Administrative Committee, provided notification of such review is accomplished in a timely manner.

If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

Marilee Pierotti Lau

Certificate No. 20125 EA issued to respondent Marilee Pierotti Lau, is revoked pursuant to Determination of Issues numbers 1 and 2 separately and for all of them; provided, however, said revocation is stayed and respondent is placed on probation for five (5) years on the following terms and conditions:

(1) The certificate shall be suspended for a period of eighteen (18) months for each Determination of Issues. Both suspensions shall run concurrently. During the suspensions, the respondent shall engage in no activities for which a permit to practice public accountancy is required.

(2) Respondent shall complete thirty-two (32) hours of SAS update and FASB update and related professional

education courses within one (1) year. This shall be in addition to CPE requirements for renewal.

(3) Respondent shall obey all federal, California, other state and local laws including those rules relating to the practice of public accountancy in California.

(4) Respondent shall submit quarterly written reports to the Board on a form provided by the Board.

(5) Respondent shall make personal appearances and report to the Administrative Committee at the Board's notification, provided such notification is accomplished in a timely manner.

(6) Respondent shall cooperate fully with the Board of Accountancy, and any of its agents or employees in their supervision and investigation of her compliance with the terms and conditions of this probation.

(7) In the event respondent should leave California to reside or practice outside this state, respondent must notify Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.

(8) Respondent shall be subject to, and shall permit, a general review of the respondent's professions practice. Such review shall be conducted by representatives of the Board whenever designated by the Administrative Committee, provided notification of such review is accomplished in a timely manner.

If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

Robert Engel Nilssen

Certificate No. 14437 EL issued to respondent Robert Engel Nilssen, is revoked pursuant to Determination of Issues numbers 1, 2 and 5 separately and for all of them; provided, however, said

revocation is stayed and respondent is placed on probation for five (5) years on the following terms and conditions:

(1) The certificate shall be suspended for a period of eighteen (18) months for each Determination of Issues 1 and 2 separately and one (1) year for Determination of Issues number 5. All suspensions shall run concurrently. During the suspensions, the respondent shall engage in no activities for which a permit to practice public accountancy is required.

(2) Respondent shall obey all federal, California, other state and local laws including those rules relating to the practice of public accountancy in California.

(3) Respondent shall submit quarterly written reports to the Board on a form provided by the Board.

(4) Respondent shall make personal appearances and report to the Administrative Committee at the Board's notification, provided such notification is accomplished in a timely manner.

(5) Respondent shall cooperate fully with the Board of Accountancy, and any of its agents or employees in their supervision and investigation of his compliance with the terms and conditions of this probation.

(6) In the event respondent should leave California to reside or practice outside this state, respondent must notify Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.

(7) Respondent shall be subject to, and shall permit, a general review of the respondent's professions practice. Such review shall be conducted by representatives of the Board whenever designated by the Administrative Committee, provided notification of such review is accomplished in a timely manner.

If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed

against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

Don Fraser Oliver

Certificate No. 40888 EI issued to respondent Don Fraser Oliver, is revoked pursuant to Determination of Issues numbers 5, provided, however, said revocation is stayed and respondent is placed on probation for two (2) years on the following terms and conditions:

(1) The certificate shall be suspended for a period of six (6) months. During the suspension, the respondent shall engage in no activities for which a permit to practice public accountancy is required.

(2) Respondent shall obey all federal, California, other state and local laws including those rules relating to the practice of public accountancy in California.

(3) Respondent shall submit quarterly written reports to the Board on a form provided by the Board.

(4) Respondent shall make personal appearances and report to the Administrative Committee at the Board's notification, provided such notification is accomplished in a timely manner.

(5) Respondent shall cooperate fully with the Board of Accountancy, and any of its agents or employees in their supervision and investigation of his compliance with the terms and conditions of this probation.

(6) In the event respondent should leave California to reside or practice outside this state, respondent must notify Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.

(7) Respondent shall be subject to, and shall permit, a general review of the respondent's professions practice. Such review shall be conducted by representatives of the Board whenever designated by the Administrative Committee, provided notification of such review is accomplished in a timely manner.

If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

IT IS SO ORDERED this 20 day of October, 1988.

HENRY YEE, CPA
Vice-President
Board of Accountancy
Department of Consumer Affairs

No.

IN THE

Supreme Court of the United States

October Term, 1988

STEPHEN J. RUSSO,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SANTA CLARA, *et al.*,

Respondents.

PROOF OF SERVICE
PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

WILLIAM P. LUCKE
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JEFFREY B. HARRISON
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Telephone: (415) 441-1707
Counsel of Record

PROOF OF SERVICE

I am a citizen of the United States and a resident of San Francisco County. I am over the age of eighteen years and not a party to the within entitled action; my business address is: One Daniel Burnham Court, Suite 220C, San Francisco, California 94109. On January 25, 1989 I served the PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA in said action by having true copies thereof placed in sealed envelopes with postage thereon fully prepaid, in the United States Mail at Washington, D.C. addressed to all such parties as follows:

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All parties required to be served have been served.

I declare under penalty of perjury under the laws of the State of California and of the United States of America that the foregoing is true and correct.

Executed on Wednesday, January 25, 1989 at San Francisco, California.

_____

Margaret M. Mincher

Supreme Court, U.S.
FILED
FEB 28 1989
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 88-1227

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1988

STEPHEN J. RUSSO,
Petitioner,

VS.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
FOR THE COUNTY OF SANTA CLARA,
Respondent.

BEAR, STEARNS & CO., INC. and MICHAEL J. DOHERTY, JR.; BANK OF THE WEST; PAUL A. WEHNER; ERNEST DE LA OSSA; KMG MAIN HURDMAN; MARILEE LAU; FREDERIC D. WINSLOW; ROBERT W. VICKREY; ROBERT E. NILSSEN; SECURITY PACIFIC NATIONAL BANK; KOUNS, MARSHALL, QUINLIVAN & SEVERSON; PAUL M. KOUNS; DOUGLAS E. MARSHALL; MICHAEL QUINLIVAN; LAWRENCE L. SEVERSON; ROBERT D. CAMPBELL; WILLIAM F. GATES; RIDGE L. HARLAN; RICHARD G. LANDIS; and WILLIAM E. MCKENNA,
Real Parties in Interest,

PAUL C. KNAUFF,
Additional Real Party in Interest.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT

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I

QUESTIONS PRESENTED FOR REVIEW

1. Whether this Supreme Court has jurisdiction to decide an issue of a state court's interpretation and application of state case law and state statute regarding determination of good faith settlements in a state court action regarding state law claims.

2. Whether this Supreme Court has jurisdiction where the petitioner has previously stated in open court that he is *withdrawing* his pending petition on the Court of Appeal denial of writ of mandate regarding orders determining good faith settlement pursuant to California Code of Civil Procedure section 877.6, which petition he is now seeking to pursue by writ of certiorari to this Court.

3. Whether the state trial court acted within its discretion in granting an order shortening time for notice of the good faith determination hearing, which order shortening time was not objected to by petitioner.

4. Whether a state trial court properly refused to continue a hearing to determine the good faith of settlements pursuant to C.C.P. § 877 and § 877.6, when the petitioner requested such continuance in order to conduct discovery on the issue, where petitioner did not request continuance or discovery until the morning of the hearing, did not present a discovery at the plan hearing, and had prior opportunity to conduct such discovery, and where the trial court had sufficient evidence before it to make a determination.

5. Whether petitioner can attack the good faith of the settlements, where that issue is raised for the very first time in the petition for writ of certiorari to the U.S. Supreme Court.

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Real Parties in Interest.

PAUL C. KNAUFF,
Additional Real Party in Interest.

II

JURISDICTIONAL QUESTION

Petitioner erroneously seeks to invoke jurisdiction of this Court pursuant to 28 U.S.C. section 1257(3), which has been actually amended to 28 U.S.C. section 1257(a) providing that final judgments or decrees of the highest court of a State may be reviewed by the U.S. Supreme Court by writ of certiorari:

> . . . where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or commission held or authority exercised under, the United States.

Petitioner seeks writ of certiorari for review of a California Court of Appeal decision denying his petition for writ of mandate, and not the decree of the highest court of the State. It is the position of the individual settling plaintiffs as real parties in interest that this matter is not within the jurisdictional bounds of this U.S. Supreme Court. Rather, the case strictly involves state court interpretation of its own state law.

For this Court to grant a writ for certiorari, the issues presented must involve a *substantial* federal question. *Angel v. Bullington*, 330 U.S. 183 (1947). Further, the substantial federal question must be raised in a timely and proper manner in the state courts. Timeliness is generally determined according to state procedural law and failure to raise such question when required by state statute will preclude review (*Edelman v. California*, 233 U.S. 357 (1953)), unless the state rule does not give the appellant a fair opportunity to raise the question or if the rule appears to evade the federal question decision. *National Mut. Building & Loan Ass'n. v. Braham*, 193 U.S. 635 (1904).

State courts have been traditionally viewed as the appropriate forum to make the final determination on questions of state law. *Scripto, Inc. v. Carson*, 362 U.S. 207 (1960). Review is not available if the decision of the state court was based exclusively on state law. *McCoy v. Shaw*, 77 U.S. 302 (1928). This Court restated this view in *Herb v. Pitcairn*, 324 U.S. 117, 125-126 (1945), as follows: "[T]his Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds."

The California Court of Appeal, First Appellate District, denied without opinion the subject petition for writ of mandate.

Subsequently, the California Supreme Court denied without opinion petitioner's review of the decision of the Court of Appeal. Therefore, we must look to the basis for the trial court's decisions in this matter.

A review of such decisions, which are included in petitioner's appendix, clearly reflect that they are based exclusively on state law. The state court's orders are based upon both state statutory and judicial authority, including California Code of Civil Procedure sections 877 and 877.6, which provide for settlement between less than all parties in an action, and *Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d 488 (1985), which established the criteria for determining the "good faith" of such settlements.

This Court has also ruled on its jurisdiction to review cases which include both federal and state questions. In the landmark case of *Murdock v. Memphis*, 22 L.Ed. 429 (1875), this Court stated that it would not review a state decision if that decision was based upon adequate state grounds and that even though a case may contain a federal question, the Court will not grant review if there is an adequate state ground supporting the state court decision. Therefore, even though petitioner vaguely raised the possibility of a deprivation of a Constitutional property right, settling plaintiffs and real parties in interest contend that the decisions from which petitioner seeks review were founded on adequate state grounds, as set forth above.

It is clear that petitioner's petition for writ of certiorari does not meet the jurisdictional criteria for granting the petition nor to invoke the attention of this federal body.

III

STATEMENT OF THE CASE

A. FACTUAL BACKGROUND OF THE UNDERLYING ACTIONS

Technical Equities Corporation did business in San Jose, California starting in 1969. Technical Equities held itself out as a company which could provide complete financial planning and

portfolio management, as well as management of operating companies. Over its 16 year history, according to its audited financial statements, T.E. increased its assets and profits annually, and its common stock, which was later traded on the NASDAQ system, continued to climb in value.

In fact, Technical Equities was a fraudulent financial scheme, particularly preying upon individuals who had money but little time for or knowledge of financial management of those funds, such as widows, orphans, doctors, professional athletes, and the elderly. Over the years, *hundreds* of people throughout the United States invested their life savings in Technical Equities. On February 7, 1986, Technical Equities filed for protection under Chapter 11 of the Bankruptcy Code, leaving its investors with out-of-pocket losses of approximately $150 million.

Plaintiffs' counsel herein represent the vast majority of T.E. investors who suffered financial and emotional losses arising from the financial fraud which was Technical Equities. The hundreds of actions filed by these individual plaintiffs were all coordinated as one action, in Santa Clara County Superior Court, before one judge, the Honorable Conrad L. Rushing.

Seven test cases were set for trial commencing on March 31, 1988. During the first two weeks of trial, prior to opening statements, many of named defendants entered into settlements with these hundreds of plaintiffs. The settlements included cash payments by the following defendants:

$25 million from Security Pacific National Bank, the primary banker for T.E.;

$17.9 million from KMG Main Hurdman, the auditor of T.E. financials;

$10.8 million from Bear, Stearns & Company, the market maker for T.E. common stock;

$4 million from Bank of the West, another financial affiliate of T.E.;

$900,000 from Ernest de la Ossa, a T.E. consultant, a T.E. director and a director of Bank of the West; and

$668,576.70 from Kouns, Marshall, Quinlivan & Severson, the attorneys for T.E.

Other settling defendants are officers and directors of Technical Equities, who have agreed to the entry of judgments against them based upon the findings of the jury regarding T.E. investors' out-of-pocket losses, and the assignment of rights as to insurance policies providing coverage to said defendants. There were *no* sliding scale settlements.

These settlements were twice determined to be in good faith, at two separate hearings pursuant to C.C.P. § 877.6 and the standards set forth in California case law. Several of these settlements were contingent upon the finality of the § 877.6 determination, prior to distribution to the injured plaintiffs.

Petitioner Russo is a defendant in Phase II of the T.E. litigation. There were 31 defendants named in Phase I of the litigation, which culminated in these settlements and in trial. In 1988, 20 new defendants were added as Does defendants—which is Phase II of the T.E. litigation, set for trial on October 3, 1988.

On the first day of trial, the parties entered into a stipulation regarding trial. Pursuant to that stipulation, plaintiffs and petitioner waived the right to a jury, waived the right to findings, and waived the right to appeal. The parties also stipulated that the trial court could take judicial notice of all evidence previously presented in the Technical Equities coordinated proceeding. Plaintiffs also dismissed their intentional tort claims against petitioner as well as claims for punitive damages.

At the hearing of October 3, 1989, as part of the stipulation regarding waiver of appeal, *petitioner specifically withdrew his pending petition for review to the California Supreme Court of the denial of petition for writ of mandate by the California Court of Appeal*—the specific matter which petitioner now attempts to have revived before this Court.

At the conclusion of the month-long Phase II court trial, judgment was entered in favor of settling plaintiffs against petitioner Russo for investor losses and emotional distress damages.

B. CHRONOLOGY OF EVENTS REGARDING THE UNDERLYING ORDERS

1. Phase I Of The T.E. Litigation And The First Good Faith Determination Hearing

The first phase of the T.E. litigation culminated with the trial of seven T.E. cases involving elderly plaintiffs. This trial was scheduled on an expedited basis pursuant to C.C.P. § 36(a), commencing on March 31, 1988, and finally concluding on June 29, 1988.

During the first two weeks of trial, the majority of defendants entered into settlements with the trial plaintiffs *and hundreds* of other T.E. investor plaintiffs who had brought actions which were a part of the T.E. Coordinated Proceeding. These settlements totalled approximately *$60 million* in cash, and in addition included assignment of rights to insurance coverage, and in some instances the entry of judgments based upon the verdict ultimately rendered by the jury in the test trial. *None* of these were sliding-scale settlements. The remaining seven Phase I defendants—six T.E. officers and a related general partnership—proceeded to conclusion of trial.

In utilizing a test case procedure, plaintiffs' counsel had filed hundreds of actions on behalf of individual T.E. investors, but had only served the few test actions for similicity of procedure. After the test cases had been set for trial, on or about March 4, 1988, a few elderly plaintiffs amended their complaints to substitute in several new defendants as Does, in anticipation of a second phase of test cases. Thereafter, the Court orally ordered at its hearing on March 18, 1988 that all plaintiffs to all actions which are a part of the T.E. Coordinated Proceeding should commence service of all of their actions on all defendants by May 1, 1988.

Because plaintiffs' counsel were still in trial and because plaintiffs' requested leave to amend their hundreds of complaints to add new defendants as Phase II Does and refine the pleadings, the Court entered an Order on April 27, 1988, amending its oral order such that all complaints were to be filed and service commenced by June 1, 1988 rather than May 1, 1988. On June 2, 1988, the Court by minute order extended the time from June 1, 1988 to June 10, 1988.

Apparently because his newly acquired client had not been substituted into the few new test cases as a Doe, counsel for Stephen Russo, a former T.E. Assistant Controller, frequently attended the trial and actively solicited plaintiffs' counsel to name his client as a defendant when the hundreds of complaints were amended. Indeed, Russo's counsel sent a letter dated April 27, 1988 to plaintiffs' counsel with instructions regarding service of process on Russo. In response to plaintiffs' counsel's questioning of such approaches, Russo's counsel sent an explanatory letter dated May 13, 1988 to plaintiffs' counsel. These communications and the frequent appearances of Russo's counsel at trial proceedings occurred *prior* to the noticing of the § 877.6 hearings.

After granting the parties' request for an order shortening time to determine whether the several settlements between plaintiffs and defendants were in good faith, pursuant to C.C.P. § 877 and § 877.6, duly noticed motions were heard on May 18, 1988 and May 25, 1988. Appropriate briefs were filed by all parties, including declarations in support of a finding of good faith. There being no formal opposition, the Court granted all of the motions determining the settlements to be in good faith. Notice of Entry of Omnibus Order and Omnibus Order Approving Settlements was entered on May 31, 1988 and sent to all parties to the T.E. Coordinated Proceeding. No writ was filed contesting these good faith determinations during the statutory time period.

Prior to the amending of the complaints, plaintiffs' counsel made a determination as to which additional persons and entities had responsibility for the losses sustained by the hundreds of T.E. investors. Hundreds of individual T.E. investor plaintiffs amended their complaints and served the defendants who had not settled and the new Doe defendants—the so-called Phase II defendant—which now included Stephen Russo. These complaints were served on June 10, 1988, in accordance with court order.

Final verdict in the test case trial was rendered on June 29, 1988. Thereafter, the trial court set post-trial motions for hearing on July 28, 1988.

2. Phase II Of The T.E. Litigation, When Petitioner Russo Had Over 30 Days To Take Discovery If Necessary On The Issues Regarding Settlement

After the conclusion of trial, the Court scheduled weekly status conferences regarding the remaining T.E. actions. Petitioner Russo, who had been served on June 10, 1988, was made formally aware of these status conferences, and of the prior settlements. (As a matter of fact, Russo's counsel had been aware of the status of settlements and trial, which he personally attended, since well before sending his letter of April 27, 1988.) At the first of these status conferences, on July 13, 1988, the attorney sent from the offices of defense counsel for Russo told the Court that he had never met his client and did not even know what his position was with Technical Equities.

At the status conference on July 20, 1988, the settling defendants requested an order shortening time for another good faith determination hearing because of the addition of new defendants in the action. *There being no opposition to the request*, the Court granted the order shortening time, and set the good faith determination hearing for July 27, 1988. Defense counsel for Russo was present at the hearing on July 20, 1988 and *voiced no opposition.* Settling defendants were ordered to serve their renewed motions by July 22, 1988 on all parties, which they did.

No parties, including Russo, noticed discovery regarding the good faith of the settlements, although plaintiffs' counsel specifically made themselves available for discovery should any defendant have requested. *On the morning of this second good faith determination hearing*, petitioner Russo filed an "objection". This objection *did not contest that the settlements had been entered into in good faith* nor did it present a discovery plan. *Russo presented no declarations* contesting the good faith of the settlements achieved, to counter the many declarations filed by the plaintiffs' counsel and settling defense counsel. Rather, the Russo objection *raised for the first time on the day of the hearing that the matter was being heard on shortened time*, and that the hearing should be continued for an undefined period of time so that petitioner could *work on* formulating a discovery plan and then noticing and taking discovery. In the meantime, the settle-

ment of hundreds of T.E. investor actions, including many elderly people who lost their life savings, would have to wait.

The Court, concluding that it had been presented with more than sufficient evidence regarding the culpability of the defendants, evidence regarding the available insurance coverage of the settling defendants, and the good faith of the settlements, and *no* evidence to the contrary, determined again that the settlements had been entered into in good faith.

Thereafter, as a result of the post-trial motion hearing on July 28, 1988, an Amended Judgment was entered on August 3, 1988, as to the test trial cases.

Test trial against the new defendants, including petitioner Russo, was set for October 3, 1988. That month-long trial concluded with judgments being entered in favor of the settling plaintiffs and real parties in interest against petitioner Russo.

IV
REASONS REVIEW SHOULD BE DENIED

A. PETITIONER PREVIOUSLY WITHDREW HIS PETITION FOR REVIEW

On the first day of trial, the parties herein entered into a stipulation regarding trial, including waiver of appeal. On the record of that proceeding, petitioner specifically withdrew his petition for review on this very matter (which at the time was pending before the California Supreme Court).

Accordingly, the matter presented by this petition for writ of certiorari is *moot* as the prior petition for review was withdrawn by petitioner.

B. THE COURT'S DETERMINATION THAT THE SETTLEMENTS WERE ENTERED INTO IN GOOD FAITH WAS WELL-REASONED, WITHIN ITS DISCRETION, AND ADEQUATELY NOTICED

At the trial court hearings, and by his petitions to the California Appellate Courts, petitioner Russo *did not* ask the courts to overturn the trial court's determination that the settlements

herein were entered into in good faith. Rather, petitioner Russo brought a petition for writ of mandate on the grounds that the trial court abused its discretion in scheduling the good faith hearing on shortened time and in not continuing the hearing until petitioner Russo could formulate a discovery plan and take discovery on *Tech-Bilt* issues.

1. The Court Was Within Its Discretion In Granting An Order Shortening Time For Notice Of The Good Faith Determination Hearing, Which Order Shortening Time Was Not Objected To By Petitioner Russo

California Code of Civil Procedure section 877.6(a) provides that a hearing on determination of good faith of settlements is ordinarily noticed at least 20 days prior to the hearing. Herein, all parties were orally notified of the second good faith determination hearing on 7 days notice, and received five days written notice, as the Court had granted an order shortening time.

As set forth above, petitioner Russo *did not object* at the hearing when the request for shortened time was made and granted. Indeed, petitioner Russo did not object to the timing of the hearing until the very morning of the hearing itself.

As to the shortening of notice, C.C.P. § 877.6 provides in pertinent part:

> Upon a showing of good cause, the court may shorten the time for giving the required notice to permit the determination of the issue to be made before the commencement of the trial of the action, or before the verdict or judgment if settlement is made after the trial has commenced.

The shortening of the notice period was within the discretion of the trial court. The first good faith hearing was held on shortened time prior to verdict, and the second good faith hearing was held on shortened time prior to entry of the amended judgment.

Accordingly, the granting of the order shortening time for the good faith determination hearing was appropriately within the discretion of the trial court, and was *not opposed or objected to by defendant Russo at the time the order shortening time was granted.*

2. The Court Acted Within Its Discretion In Refusing To Continue The Good Faith Hearing Upon Petitioner Russo's Request To Take Undefined Discovery

Petitioner Russo relies upon the decision in *Singer Co. v. Superior Court*, 179 Cal.App.3d 875 (1986), in contending that the trial court abused its discretion in refusing to continue the second good faith determination hearing in order for defendant to formulate a discovery plan to elicit information relevant to the factors to be weighed by the trial court as set forth in *Tech-Bilt, Inc. v. Woodward-Clyde & Associates, supra*, 38 Cal.3d 488.

However, *Singer* is *not contrary* to the procedures and actions taken by the trial court herein. *Singer* was a pioneer case in holding that a non-party tortfeasor, who was not a party to an action at the time the good faith determination was made as to a settling defendant, "must be afforded notice and an opportunity for a hearing" before that tortfeasor's rights to indemnity and contribution against the settling defendant can be barred under C.C.P. § 877.6. In this T.E. coordinated proceeding, petitioner Russo *did* have the opportunity of notice and a hearing on the good faith determination after Russo was named as a defendant in this action.

Singer also held that a party *contesting* the good faith determination has the burden of proving lack of good faith, and should be afforded the opportunity of discovering information relevant to the *Tech-Bilt* factors, so that the trial court can make an informed determination. *Singer*, at 895.

Here, petitioner Russo did *not* contest the determination that the settlements were in good faith. At the trial court level and in all of his California appellate briefs, petitioner Russo has only complained that he did not have a sufficient opportunity to gather information through discovery in order to present evidence regarding the *Tech-Bilt* factors. Petitioner Russo is confused, in that a tortfeasor's right to limited discovery from settling defendants regarding *Tech-Bilt* factors *does not arise unless and until the tortfeasor has asserted a lack of good faith.*

In his petition for writ of certiorari to this Court, *petitioner raises for the very first time* his contention that the settlements

were not in good faith. In support of this new contention, petitioner only discusses the settlement with KMG Main Hurdman, the auditor for Technical Equities, which settlement for $17.9 million was a record-breaking amount in investor fraud actions.

Defendant Russo has never previously asserted that the settlements were not entered into in good faith. Rather, the "objection" filed the day of the hearing requesting a continuance in order to formulate a discovery plan was nothing more than a thinly veiled attempt to create delay, as the trial against petitioner Russo was set to commence October 3, 1988. There is no assertion in his "objection" that there is a lack of good faith, but rather petitioner proposes a "fishing expedition" without any basis in fact. As petitioner did not allege that the settlements were in bad faith, there was no right to discovery.

Even if the "objection" is viewed as a tacit opposition to the good faith determination itself, petitioner Russo was afforded the opportunity to gather sufficient information through discovery prior to the second good faith determination hearing.

The circumstances in the *Singer* case do not vitiate the result of the exercise of the trial court's discretion here. In *Singer*, the plaintiffs brought a wrongful death action arising from the fire death of two children. Damages for the actions were estimated to be $252,000 and $500,000 respectively. Defendant Cool-Temp settled each of the two cases for only $5,000.

Later, Singer was brought into the litigation as a cross-defendant in a cross-complaint filed by other defendants in January 1985. After filing and serving an answer and a cross-complaint for indemnity and contribution against Cool-Temp and others on March 1, 1985, Singer promptly served two sets of interrogatories and three requests for production of documents on Cool-Temp on March 25, 1985 seeking discovery of evidence relevant to those factors identified in *Tech-Bilt. Singer,* at 882.

Thereafter, Cool-Temp brought a motion to dismiss the Singer cross-complaint on the grounds of C.C.P. § 877 and 877.6. Cool-Temp refused to comply with and respond to the discovery propounded by Singer regarding the factors relevant to a good

faith determination. Despite Singer's request for a continuance of the motion to dismiss until after the motion to compel discovery, the trial court refused to continue the hearing.

In this T.E. Coordinated Proceeding, petitioner Russo made no attempt to propound discovery relevant to *Tech-Bilt* factors. In fact, petitioner Russo had no discovery proposal for the court to even consider when he raised *for the first time* at the good faith hearing his desire to propound discovery.

The *Tech-Bilt* factors for which discovery might be appropriate are:

> (1) A rough approximation of plaintiffs' total recovery;
>
> (2) Settlor's proportionate liability;
>
> (3) The amount paid in settlement;
>
> (4) The allocation of settlement proceeds among plaintiffs;
>
> (5) Recognition that a settlor should pay less in settlement than he would if he were found liable after a trial;
>
> (6) Financial conditions and insurance policy limits of settling defendants; and
>
> (7) The existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants.

Singer, at 895, citing *Tech-Bilt*, at 499; *see also City of Grand Terrace v. Superior Court*, 192 Cal.App.3d 1251, 1260 (1987).

Prior to the second good faith determination hearing, *defendant Russo was given the opportunity to have access to information regarding all of the above Tech-Bilt factors.* As a part of previous discovery which was accessible to all parties to the T.E. actions, including petitioner Russo, the report of Brooks, Stednitz & Rhodes, an independent accountancy firm acting as plaintiffs' expert witness, reflected the out-of-pocket losses of each of the hundreds of settling plaintiffs. The trial court had previously ordered that any party to the T.E. Coordinated Proceeding who made the request must be given information regarding the terms of each of the settlements, including the amount to be paid in

settlement. Plaintiffs' counsel has previously disclosed as a part of the public record that the settlement funds would be allocated to all of the individual settling plaintiffs on a pro rata basis, based upon the verified damages set forth in the Brooks, Stednitz & Rhodes report. Defendant Russo also had full access to information regarding settlors' proportionate liability, as he had full access to all of the discovery in the litigation, including but not limited to the trial transcripts and trial exhibits.

The trial court, in determining that the settlements were in good faith as to petitioner Russo, had a comprehensive amount of evidence and information at its disposal. Judge Conrad Rushing, acting as the Technical Equities Coordination Trial Judge, had been the sole judge handling these hundreds of coordinated actions since coordination was granted in Summer of 1986. That trial court had been privy to the many motions for summary judgment and summary adjudication, reviewing hundreds of pages of depositions and hundreds of documents produced in the litigation regarding the settling defendants. The trial court had recently concluded presiding over a three-month "super trial", for which a courtroom was specially constructed, consisting of hundreds of hours of testimony and hundreds of trial exhibits, further revealing information regarding the liability of the named defendants, including settling defendants.

The trial court had requested and had access to information regarding all of the insurance policy limits potentially providing coverage to the settling defendants. The trial court also met with the two Settlement Special Masters in making his determination that there was no collusion, fraud or tortious conduct between the settling parties.

The trial court's conclusion that further discovery would not shed further light in making his determination regarding the good faith of the settlements pursuant to the *Tech-Bilt* factors was well-reasoned and within the court's discretion. There was "a sufficient evidentiary basis to enable the court to consider and evaluate the various aspects of the settlement." *City of Grand Terrace v. Superior Court, supra* at 1263.

Absent a finding that the trial court abused its discretion, the determination of good faith cannot now be set aside. *Singer*, at 895.

V

CONCLUSION

For all of the foregoing reasons, settling plaintiffs, as real parties in interest, pray that the petition for writ of certiorari be denied.

DATED: February 27, 1989

Respectfully submitted,

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(Appendix follows)

APPENDIX

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

COURTROOM NUMBER 100

BEFORE THE HONORABLE CONRAD L. RUSHING,
JUDGE

COORDINATED PROCEEDING,	COORDINATED PROCEEDING
SPECIAL TITLE (RULE 1550(B))	MASTER FILE NUMBER 1991
TECHNICAL EQUITIES CASE	SANTA CLARA COUNTY
	SUPERIOR NO. 600306

FIRST DAY

OCTOBER 3, 1988

Santa Clara, California October 3, 1988

Morning Session

Proceedings

The Court: Counsel, good morning.

Mr. Ruby: Good morning.

The Court: This is the coordinated technical equities case set for jury trial this morning.

Mr. Ruby, you are at the podium, you may proceed.

Mr. Ruby: For the record, Allen Ruby appearing on behalf of the plaintiffs. And we have a stipulation to announce to the Court.

As respects the plaintiffs litigation group, plaintiffs and defendant Stephen Russo, whose case is set for jury trial this morning, I am reciting this stipulation on behalf of all plaintiffs represented by the plaintiffs litigation group. And in particular the law firms of me, Tom Anderson, Cotchett and Illston, the Garvic law firm, Lanzone law firm, Crosby law firm and Rappaport law firm.

And the plaintiffs who are covered by this stipulation are further identified in Exhibit A. through G. or perhaps the Court's Exhibit A. through G. in the court trial that concluded the proceedings as to four of the defendants several weeks ago.

The stipulation is as follows: The plaintiffs and defendant Russo stipulate to waive jury. In return for a waiver of jury trial the parties waive their right to findings, memorandum of decision or such other findings from the Court is no longer required. And the parties also mutually waive their right to appeal from any judgment of the Court.

The court trial will be on behalf of all the plaintiffs, all of the several hundred plaintiffs represented by the law firms identified previously.

The plaintiffs, as part of this stipulation, will dismiss without prejudice their fraud and other intentional tort claims. Any claims involving malice or oppression will be dismissed from the proceedings to be heard by the court in this court trial.

It is further stipulated by the parties that the Court may, in rendering judgment in this court trial, fully consider and take into account all evidence submitted at the jury trial which was presided over by this Court previously.

Defendant Russo reserves his right to claim that certain evidence may or may not be meaningful as to his client as anyone has in any trial, but admissibility of all the evidence from the jury trial is established by stipulation of the parties.

This is the entire stipulation and the entire agreement before the Court and the entire agreement.

I have now recited everything that is the subject of the stipulation or agreement or understanding between the parties and we affirmatively represent that to the Court. And that's the stipulation we tender.

Mr. Harrison: Could I talk to Mr. Ruby? I think there may have been a misstatement.

Mr. Ruby: Your honor, it's been pointed out to me that I misspoke. The fraud claims and other intentional tort claims that we dismissed as part of the stipulation will be dismissed with prejudice. Apparently I said without prejudice and that was erroneous. So those fraud claims will be dismissed with prejudice.

Mr. Harrison: That's fine. Jeff B. Harrison. I apologize for walking around disturbing the Court when Mr. Ruby was reciting that, but I picked up on that and it had me concerned, your honor.

The Court: Yes. Is that your stipulation?

Mr. Harrison: That is my stipulation. But further, your honor, Mr. Russo is present and the Court would want to inquire as to his understanding and willingness and agreement with that stipulation. If I could have him come forward?

The Court: You may, yes.

Mr. Harrison: Steve. Your honor, this is Steven J. Russo, my client. This is his honor Judge Rushing.

The Court: Mr. Russo, good morning.

Mr. Russo, did you hear the stipulation that was offered on the record by Mr. Ruby?

Mr. Russo: Yes, I did, sir.

The Court: Were you able to understand it?

Mr. Russo: I did understand it.

The Court: Have you had a chance to talk it over with your attorney?

Mr. Russo: I have talked it over with counsel, discussed it and in complete agreement.

The Court: Did I hear you are in complete agreement with it?

Mr. Russo: Yes, sir.

The Court: Therefore you do accept it?

Mr. Russo: Yes, I do, sir.

The Court: And Mr. Harrison, on his behalf you do accept it as well?

Mr. Harrison: Yes, your honor, I do.

The Court: Very well. The court will accept it, then.

Mr. Harrison: The one remaining matter that we just didn't resolve in chambers was the timing. Do we work it out amongst ourselves for his deposition?

Mr. Ruby: We have agreed that if the plaintiffs want to take Mr. Russo's deposition, Mr. Harrison will make him available at our reasonable—office of our choosing tomorrow afternoon. We will notify Mr. Harrison before the end of the day whether in fact we do which to depose Mr. Russo.

The Court: Is that right, counsel?

Mr. Harrison: Yes, yes, your honor.

The Court: All right.

Mr. Ruby: If I may, your honor, just so, in an abundance of care, I'd like to restate again and ask for Mr. Harrison's concurrence, that the stipulation which we have now placed on the

record represents the entire stipulation between the parties and there are no other terms and conditions other than what has been recited on the record in open court today.

Mr. Harrison: That is absolutely correct. There are no terms, conditions, promises, representations, warranties of any type.

The Court: Very good.

Mr. Cotchett: On behalf of the Cotchett, Rappaport, Garvic and the Lanzone law firms, we personally waive the appeal as set forth in the prior stipulation.

The Court: All right.

Now, this personal waiver of appeal, Mr. Russo, do you waive any rights of appeal that you have from this case? Mr. Harrison and Mr. Russo, I think you can do it, Mr. Harrison?

Mr. Harrison: We have done so. I thought that was part of the stipulation. And acturally included within that, as the court knows, is a, there was a pending petition on a denial of a writ on the 877.6 good faith hearing from May of '88.

The Court: Yes.

Mr. Harrison: That was denied but I did file a petition for review with the Supreme Court which is pending. It has not been denied. So that I have to assume as part and parcel of that is a withdrawal?

The Court: Well, that is not a right of appeal from a judgment, actually that's a writ proceeding. But I take it that that writ proceeding, whatever it is, and I am not familiar with it, but is that withdrawn?

Mr. Harrison: Let me talk to my appellate lawyer here. It may have been denied. So, there was petition for a stay that got denied. So may be moot. It is not an important issue, I don't believe. I am not going to—

The Court: Well, the point is—all right.

Mr. Harrison: A moot thing, red herring.

The Court: Mr. Trussell?

Mr. Trussell: On behalf of the clients represented by the Anderson firm, we also now personally waive our appellate rights in accordance with the stipulation explained by Mr. Ruby.

The Court: All right. Very good. Anything else?

All right these cases will be set down for trial Wednesday, October 5th at 9:30. The plaintiffs are to have to me by 4:00 o'clock October 4th a trial brief. It need not be extensive.

Anything further now? All right. Thank you, counsel, you are all excused until October 5th at 9:30.

Supreme Court, U.S.
FILED
MAR 8 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1227 (3)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

STEPHEN J. RUSSO,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SANTA CLARA, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT

PETITIONER'S REPLY MEMORANDUM

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PETITIONER'S REPLY MEMORANDUM

I. PETITIONER NEVER WITHDREW HIS PETITION FOR REVIEW FROM THE CALIFORNIA SUPREME COURT.

In their brief in opposition to this petition for writ of certiorari, plaintiffs assert that petitioner Russo withdrew his petition for review from the California Supreme Court as a result of stipulations entered on the first day of trial, October 3, 1988. This is not true, and in fact the petition for review was denied by the California Supreme Court on October 27, 1988. A facsimile of the California Court's order denying review is reproduced at page a22 of the appendix to this petition.

The transcript reproduced in the appendix to plaintiffs' opposition brief demonstrates the confusion underlying their erroneous assertion that the California petition for review was withdrawn:

> The Court: Now, this personal waiver of appeal, Mr. Russo, do you waive any rights of appeal that you have from this case? Mr. Harrison and Mr. Russo, I think you can do it, Mr. Harrison?

> Mr. Harrison: We have done so. I thought that was part of the stipulation. And actually included within that, as the court knows, is a, there was a pending petition on denial of a writ on the 877.6 good faith hearing from May of '88.
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> The Court: Yes.
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> Mr. Harrison: That was denied but I did file a petition for review with the Supreme Court which is pending. It has not been denied. So that I have to assume as part and parcel of that is a withdrawal?
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> The Court: Well, that is not a right of appeal from a judgment, actually that's a writ proceeding. But I take it that that writ proceeding, whatever it is, and I am not familiar with it, but is that withdrawn?
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> Mr. Harrison: Let me talk to my appellate lawyer here. It may have been denied. So, there was a petition for a stay that got denied. So may be moot. It is not an important issue, I don't believe. I am not going to—
>
> The Court: Well, the point is—all right.
>
> Mr. Harrison: A moot thing, red herring.

Counsel for petitioner Russo did not intend to withdraw the petition for review as a result of this colloquy. The California Supreme Court denied the petition for review twenty-four days later. Petitioner therefore complied with the jurisdictional prerequisite of 28 U.S.C. Section 1257, which requires a final judgment or decree by the highest state court respecting the question presented to this Supreme Court.

II. PETITIONER RUSSO HAD NO NOTICE OF THE INITIAL GOOD FAITH SETTLEMENT DETERMINATIONS MADE BEFORE HE WAS SERVED AS A DEFENDANT IN THIS LITIGATION.

Plaintiffs misrepresent the actions of counsel for petitioner Russo during the trial of seven test cases in this litigation prior to service on petitioner. Counsel for Mr. Russo attended the trial as a spectator on two occasions only, and was never included on any service or notice list until after his client was brought into 477 of these cases by service of summons and complaint on June 10,

1988. Neither Mr. Russo nor his attorney received notice of the good faith settlement motions heard on May 18 and 25, 1988.

III. AT EVERY STAGE OF THE PROCEEDINGS LEADING UP TO THIS PETITION FOR CERTIORARI, PETITIONER ASSERTED THE SETTLEMENTS WERE NOT MADE IN GOOD FAITH.

Plaintiffs erroneously argue that petitioner failed to assert lack of good faith in the California courts below. In fact, petitioner raised that issue at every stage of the proceedings. For example, in his petition for review by the California Supreme Court petitioner stated, "The settlements were not made in good faith and must not preclude cross-complaints to be filed by this defendant . . .." Petition for Review at 6:17. Similarly, in the petition for writ of mandate filed in the California Court of Appeal, petitioner said, "The settlements were not made in good faith and must not preclude cross-complaints to be filed by this defendant." Petition for Writ of Mandate at 5:26. In respondent superior court, petitioner's brief in opposition to the good faith settlement motions addressed the criteria for good faith settlement defined in *Tech-Bilt, Inc.* v. *Woodward-Clyde & Associates*, 38 Cal.3d 488, 698 P.2d 159, 213 Cal.Rptr. 256 (1985), including proportionality, and concluded:

> The modest settlements proposed by the settling defendants at this early stage serve only to finance the balance of this entire litigation to the detriment of this defendant and will tend to add to the congestion of the Court's calendar. Although some of the settlement figures released by certain defendants may appear substantial, when considered along with recent verdicts rendered in related cases after trial, the proposed settlement amounts pale by comparison.

Opposition to Motion for Judicial Determination of Good Faith Settlement at 7-8. Clearly, petitioner raised this issue at every stage of the proceedings.

IV. CONCLUSION.

The severity of the constitutional deprivation effected by respondent superior court cannot be denied. Plaintiffs have failed to refute the underlying lack of good faith which taints respondent superior court's orders.

Petitioner focused on settling defendant KMG Main Hurdman as one example. This large, financially healthy institutional defendant was granted good faith settlement approval after paying only a small proportion of the overall recovery sought by plaintiffs, in spite of having been publicly censured for its wrongful conduct toward plaintiffs. As a result of respondent court's approval of the settlements of institutional defendants such as KMG, individuals such as petitioner Russo are unfairly left to bear the consequences of this litigation.

The need for plenary review of the action below is indisputable. Petitioner requests that this petition for certiorari be granted in order to prevent permanent deprivation of petitioner's constitutionally protected property rights; indeed, summary remand appears to be in order.

Respectfully submitted,

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PROOF OF SERVICE

I am a citizen of the United States and a resident of San Francisco County. I am over the age of eighteen years and not a party to the within entitled action; my business address is: One Daniel Burnham Court, Suite 220C, San Francisco, California 94109. On March 8, 1989 I served the PETITIONER'S REPLY MEMORANDUMON ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT in said action by having true copies thereof placed in sealed envelopes with postage thereon fully prepaid, in the United States Mail at Washington, D.C. addressed to all such parties as follows:

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CALIFORNIA SUPREME COURT
Room 4250—State Building
San Francisco, CA 94102

CALIFORNIA COURT OF APPEAL
Sixth District
333 West Santa Clara Street
Suite 1060
San Jose, CA 95113

SANTA CLARA SUPERIOR COURT
191 N. First Street
San Jose, CA 95113

BOBBIE L. WELLING
Judicial Council
Adminstrative Office
of The Courts
350 McAllister St., Rm. 3154
San Francisco, CA 94102

HONORABLE CONRAD LEE RUSHING
Judge of the Superior Court
Santa Clara County
Techmart Bldg., Third Floor
5201 Great America Parkway
Santa Clara, CA 95054

All parties required to be served have been served.

I declare under penalty of perjury under the laws of the State of California and of the United States of America that the foregoing is true and correct.

Executed on Wednesday, March 8, 1989 at San Francisco, California.

Tamsen E. Perks

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Tamsen E. Perks